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In the Supreme Court of the United States

OCTOBER TERM, 1982

NATIONAL LABOR RELATIONS BOARD, PETITIONER,

v.

TRANSPORTATION MANAGEMENT CORP., RESPONDENT

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

JOINT APPENDIX

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PETITION FOR CERTIORARI FILED JULY 30, 1982
CERTIORARI GRANTED NOVEMBER 15, 1982

In the Supreme Court of the United States

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In the Matter of: Transportation Management Corp.

Board Case No.: 1-CA-15846

Date	*Documents*
3.28.79	Charge Filed
5.9.79	Complaint and Notice of Hearing
5.17.79	Answer
9.11.79	Order Advancing Hearing
9.27.79	Teletype scheduling place of hearing
10.4.79 10.5.79	Hearing
2.8.80	Judge's Decision
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4.1.82	Opinion of Court of Appeals
11.15.82	Order Granting Certiorari

UNITED STATES OF AMERICA
BEFORE THE
NATIONAL LABOR RELATIONS BOARD
FIRST REGION

CASE NO. 1-CA-15,846

In the Matter of

TRANSPORTATION MANAGEMENT CORP.

and

GENERAL TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, BUILDING MATERIALS, HEAVY & HIGHWAY CONSTRUCTION EMPLOYEES LOCAL UNION 404, a/w THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA

COMPLAINT AND NOTICE OF HEARING

It having been charged by General Teamsters, Chauffeurs, Warehousemen and Helpers, Building Materials, Heavy & Highway Construction employees Local Union 404, a/w The International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, 549 Chestnut Street, Springfield, Massachusetts (herein called the Union) that Transportation Management Corp., Worthington Street, Springfield, Massachusetts (herein called Respondent) has been engaging in and is engaging in unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, as amended, 29 U.S.C. Sec. 151, *et seq.* (herein called the Act) the General Counsel of the National Labor Relations Board (herein called the Board), on behalf of the Board, by the undersigned Regional Director, issues this Complaint and Notice of Hearing pursuant to Section 10(b) of the act and Section 102.15 of the Board's Rules and Regulations, Series 8, as amended.

1. The Charge in this proceeding was filed by the Union on March 28, 1979 and a copy thereof served upon Respondent on March 29, 1979.

2. Respondent is and has been at all times material herein a corporation duly organizaed under and existing by virtue of laws of the Commonwealth of Massachusetts.

3. At all times herein mentioned, Respondent has maintained an office and place of business at Worthington Street, in the City of Springfield, County of Hampden, and Commonwealth of Massachusetts (herein called the Respondent's Springfield offices), and is now and continuously has been engaged at said Springfield offices in providing transportation services to various local school boards in the Commonwealth of Massachusetts.

4 (a) Respondent, in the course and conduct of its business, causes and continuously has caused at all times herein mentioned, large quantities of gasoline and automotive products used by it in providing transportation services to be purchased and transported in interstate commerce from and through various States of the United States other than the Commonwealth of Massachusetts.

(b) Respondent has annual gross revenues in excess of $500,000.

(c) Respondent annually receives from points located outside of the Commonwealth of Massachusetts goods valued in excess of $50,000.

5. The aforesaid Respondent is and has been engaged in commerce within the meaning of the Act.

6. The Union is a labor organization within the meaning of Section 2(5) of the Act.

7. At all times material herein, the following named person occupied the position set opposite his name and has been and is now an agent of the Respondent, acting on its behalf, and is a supervisor within the meaning of Section 2(11) of the Act.

George Patterson—Terminal Manager

8. Since on or about March 22, 1979 and continuing to date, Respondent has interfered with, restrained and coerced, and is interfering with restraining and coercing its employees in the exercise of their rights as guranteed in Section 7 of the Act, by the following acts and conduct:

(a) On or about March 22, 23, 24 and 27, 1979, Respondent through George Patterson interrogated at its offices and at other locations in the Springfield, Massachusetts area employees concerning union activity.

(b) On or about March 23, 1979, at a location in the Springfield area, Respondent through George Patterson

warned an employee that it would get even with another employee who was active in behalf of the union.

(c) On or about March 27, 1979, at its Springfield offices; Respondent through George Patterson in a conversation with an employee created the impression of surveillance of union activity among its employees.

9. Respondent did on or about March 26, 1979 discharge Sam Santillo employed at its said Srpingfield offices.

10. Respondent has, since the date of discharge listed above in Paragraph 9, failed to, refused to, and continues to refuse to reinstate the employee named above in Paragraph 9, to his former or substantially equivalent position of employment.

11. Respondent did discharge and refuse or fail to reinstate the employee named above in Paragraph 9, for the reason that he joined or assisted the Union, or engaged in other concerted activities, for the purposes of collective bargaining, or other mutual aid or protection.

12. By the acts described above in Paragraphs 9 and 10, carried out for the reason set forth in Paragraph 11 above, Respondent did discriminate and is discriminating in regard to the hire or tenure or terms or conditions of employment of the employee named above in Paragraph 9, thereby discouraging membership in the Union, and Respondent thereby did engage in and is engaging in unfair labor practices within the meaning of Section 8(a)(3) of the Act.

13. By the acts described above in Paragraphs 8, 9 and 10, and by each of said acts, Respondent did interfere with, restrain and coerce, and is interfering with, restraining and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, and thereby did engage in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

14. The activities of Respondent, described above in Paragraphs 8, 9 and 10, occurring in connection with the operations of Respondent, described above in Paragraphs 3 and 4, have a close, intimate, and substantial relation to trade, traffic and commerce among the several Sates and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

15. The acts of Respondent, described above, constitute unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (3) and Section 2(6) and (7) of the Act.

PLEASE TAKE NOTICE that on the 20th day of February, 1980, at 10 o'clock in the forenoon, Eastern Standard Time, and consecutive days thereafter until concluded, at a place to be determined in Springfield, Massachusetts, a hearing will be conducted before a duly designated Administrative Law Judge of the National Labor Relations Board on the allegations set forth in the above Complaint, at which time and place you will have the right to appear in person, or otherwise, and give testimony. Form NLRB-4668 Statement of Standard Procedures in Formal Hearings Held Before the National Labor Relations Board in Unfair Labor Practices Cases, is attached.

You are further notified that, pursuant to Section 102.20 and 102.21 of the Board's Rules and Regulations, the Respondent shall file with the undersigned Regional Director, acting in this matter as agent of the National Labor Relations Board, an original and four (4) copies of an Answer to said Complaint within ten (10) days from the service thereof and that unless it does so, all of the allegations in the Complaint shall be deemed to be admitted to be true and may be so found by the Board. Immediately upon the filing of its Answer, Respondent shall serve a copy thereof on each of the other parties.

WHEREFORE, the General Counsel of the National Labor Relations Board, on behalf of the Board, by the Regional Director for the First Region, on this 9th day of May, 1979, issues this Complaint and Notice of Hearing against Transportation Management Corp., Respondent herein.

/s/ Robert S. Fuchs

ROBERT S. FUCHS, *Regional Director*
National Labor Relations Board
First Region
Boston, Massachusetts

IMPORTANT NOTICE

The date which has been set for hearing in this matter should be checked immediately. If there is proper cause for not proceeding with the hearing on that date, *a motion to change the date of hearing should be made within ten (10) days from the service of the Complaint.* Thereafter, it will be assumed that the scheduled hearing date has been agreed upon and that all parties will be prepared to proceed to the hearing on that date. Later motions to reschedule the hearing generally will not be granted in the absence of a proper showing of unanticipated and uncontrollable intervening circumstances.

All parties are encouraged to fully explore the possibilities of settlement. Early settlement agreements prior to extensive and costly trial preparation may result in substantial savings of time, money and personnel resources for all parties. The Board agent assigned to this case will be happy to discuss settlement at any mutually convenient time.

Be assured that your cooperation in this, as well as other matters of mutual interest, is greatly appreciated by me, my staff, and the Agency.

/s/ Robert S. Fuchs

ROBERT S. FUCHS, *Regional Director*

UNITED STATES OF AMERICA
BEFORE THE
NATIONAL LABOR RELATIONS BOARD
FIRST REGION

CASE NO. 1-CA-15,846

In the Matter of

TRANSPORTATION MANAGEMENT CORP.

and

GENERAL TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, BUILDING MATERIALS, HEAVY & HIGHWAY CONSTRUCTION EMPLOYEES LOCAL UNION 404, a/w THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA

ANSWER

1. Respondent admits the allegations of paragraph 1 of the Complaint.

2. Respondent admits the allegations of paragraph 2 of the Complaint.

3. Respondent admits the allegations of paragraph 3 of the Complaint.

4.a. Respondent is without knowledge or information sufficient to form a belief as to the allegations of paragraph 4.a. of the Complaint.

4.b. Respondent admits the allegations of paragraph 4.b. of the Complaint.

4.c. Respondent admits that it receives goods valued in excess of $50,000 from points located outside the Commonwealth of Massachusetts indirectly but denies receiving same directly.

5. Respondent admits the allegations of paragraph 5 of the Complaint.

6. Respondent admits the allegations of paragraph 6 of the Complaint.

7. Respondent denies that George Patterson occupies the position of "Terminal Manager." Except as specifically denied, Respondent admits the allegations of paragraph 7 of the Complaint.

8. Respondent denies the allegations of paragraph 8 of the Complaint.

9. Respondent admits the allegations of paragraph 9 of the Complaint.

10. Respondent admits the allegations of paragraph 10 of the Complaint and states that the discharge of Sam Santillo was lawful and Respondent therefore has no obligation to reinstate said employee.

11. Respondent denies the allegations of paragraph 11 of the Complaint.

12. Respondent denies the allegations of paragraph 12 of the Complaint.

13. Respondent denies the allegations of paragraph 13 of the Complaint.

14. Respondent denies the allegations of paragraph 14 of the Complaint.

15. Respondent denies the allegations of paragraph 15 of the Complaint.

Attorney for Respondent

/s/ C. Fred Welensky

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Boston, MA 02109
(617) 367-6363

BEFORE THE
NATIONAL LABOR RELATIONS BOARD
FIRST REGION

CASE NO. 1-CA-15,846

In the Matter of:

TRANSPORTATION MANAGEMENT CORP.

and

GENERAL TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, BUILDING MATERIALS, HEAVY & HIGHWAY CONSTRUCTION EMPLOYEES LOCAL UNION 404, a/w THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA

Old Superior Courtroom
Hampshire County Court House
99 Main Street
Northampton, Massachusetts
Thursday, October 4, 1979

The above-entitled matter came on for hearing, pursuant to Notice, at 10:00 o'clock a.m.

BEFORE:

Honorable Steven B. Fish, Administrative Law Judge

APPEARANCES:

THOMAS P. KENNEDY, Esq.,
Keystone Building,
99 High Street
Boston, Massachusetts,
appearing as Counsel for the General Counsel.

C. FRED WELENSKY, Esq.,
One Faneuil Hall Market Place
Boston, Massachusetts, 02109;
appearing on behalf of the Respondent.

[6] MR. KENNEDY: They are.

MR. WELENSKY: We stipulate that George Patterson is Respondent's manager of its Springfield facility, and that Russell vanHorn, who was employed at the time of Mr. Santillo's discharge, was then supervisor.

MR. KENNEDY: That is understood that both Mr. Patterson and Mr. vanHorn are supervisors within the meaning of the Act.

MR. WELENSKY: Yes.

JUDGE FISH: Those stipulations are received.

[7] SAM SANTILLO

was called as a witness by and on behalf of Counsel for the General Counsel and, having been first duly sworn was examined and testified as follows:

Q. (by Mr. Kennedy) Mr. Santillo, were you previously employed by Transportation Management at its Springfield, Massachusetts location?

A. Yes, sir.

Q. When did you start there?

A. October of '76.

[8] Q. And you were discharged from that?

A. March of '79.

Q. What day in March, do you recall?

A. Yes, March 26.

Q. That was a Monday?

A. Yes, sir.

Q. What was your job there?

A. School bus driver at that point. When I was discharged I was a half bus driver, driving one of the biggest buses they have.

Q. It was a half bus?

A. They call them half buses.

Q. At the time of your discharge approximately how many drivers were there at the Springfield location?

A. At least 70, that's a guess, though, but I would guess 70.

[9] Q. Directing your attention to March 19, 1979, that is a Monday. Did you go to the Teamsters Local 404 union hall on that day?

A. Yes, sir, I did.

Q. Did you go alone?

A. No, sir, I didn't. There was me and another employee, John Walker.

Q. What reason did you go there?

A. Prior to going there there was a few employees, in fact, more than a few were complaining about different things that they were upset over. Some of the complaints I

heard was time from leaving their home to pick up a child was non-paid—

[10] THE WITNESS: There was a few employees who complained about gassing up on their own time, picking up children—at that time going to pick up the child was non-paid, there was different complaints about benefits, different little things they were complaining about.

Q. With whom did you speak when you went to the hall?

A. I talked to two business agents. One was Eddie Lymon and John Adamski.

Q. Did you sign an authorization at the hall that day?

A. Yes, sir, I did.

Q. What did you discuss with the business agents?

A. I just went there and asked them if it was possible that they could send one of their people down to the garage to talk to the drivers. There were some drivers there that wanted some information about perhaps getting a union into the garage.

Q. After you left the hall what did you do that day?

A. I went home and ate and then I had an afternoon run. I talked to some of the drivers, maybe six or seven drivers I might have talked to that afternoon.

Q. What did you say to them?

A. Right at the garage.

Q. On the next day, Tuesday, March 20, do you recall what [11] you did on that day?

A. Yes. In talking to the drivers the previous day, some drivers showed an interest, so I went back to the hall the following day and picked up some cards.

Q. How many cards did you pick up?

A. 50 or 60, I'm not sure.

Q. Did you go alone or did you go with Mr. Walker?

A. No, sir, I went alone that time.

Q. What did you do with these cards, and what did you do about the union after that?

A. Well, I went back and talked to some of the drivers about—what it was was an authorization card, and I talked to some of the drivers about signing the cards and perhaps that we would get someone to sit down and talk to us.

Q. And where did you do this?

A. At the garage. I talked to some drivers after my run was over out in the parking lot, and then I talked to a cou-

ple who live in my surrounding area. I talked to a couple of them.

Q. Now directing your attention to 6 p.m. on Friday, March 23, 1979, did you have a phone conversation with George Patterson at that time?

A. Yes, sir, I did.

Q. By that time how many employees had you talked to [12] about the union, by the time you had received this call?

A. I had talked to at least 30, maybe 35 or 40 drivers I talked to by then.

Q. Did you call Mr. Patterson or did he call you?

A. No, sir, I called him.

Q. Would you tell us what the purpose of this call was?

A. Sitting home Friday night Mr. Ed West, who also worked for TMC at the time, who also resides with me, come home and told me that Mr. Patterson was upset over what I was doing and he was taking it personally.

At that point in time I considered George a friend of mine. I didn't want to upset him. I didn't want him to think I was coming on strong against him, so I called him.

My words to him were, "George, I wish you wouldn't take it personally but it's really between the company, the union and TMC, that's it. I think you and I are out of the picture. I wish you wouldn't take it, it's nothing to do against you."

[13] Q. Can you recall anything else being said by him?

A. He did say to me, he says, "Well, lookit, when you come in Monday morning I am going to have to pretend in front of the other people that I am mad at you."

And he also related to me, he says, "By the way, this call never took place."

I said, "Okay, George."

Q. Directing your attention to the next day, Saturday, March 24, 1979. What did you do on that day?

A. I arranged a meeting for Monday, the 26th—not a union meeting, but a meeting of the drivers. So I proceeded to call every driver. I called them all. I must have spent four hours on that phone calling drivers.

Q. How many drivers would you estimate you spoke to?

A. At least 70 again, sir.

Q. And you told them what?

A. I didn't go into detail. All I told them was there [14] was a meeting being held, I think it was 6 o'clock that

night, March 26 on the Monday, if you could please be there, and I gave them the address.

Q. Where was that?

A. I forget the number but it was Chestnut Street, Local 404, at the hall. I forget the name of it.

Q. At the Teamster hall?

A. At the Teamsters hall, yes, sir.

[15] Q. And when you got home did you receive a phone call from someone?

A. Yes, it was George saying, "Could you please come back in? I want to talk to you." At that time I asked him, I said, "I just got home. Whatever it is, can we talk about it over the phone? I just got home."

He said, "No, it's pretty important. You have to come in."

[16] Q. What did you do then?

A. I went to see Mr. Patterson at his office.

Q. Who was there?

A. George Patterson was there obviously, and Mr. Russell vanHorn was sitting at the other desk, those two people.

Q. In Mr. Patterson's office?

A. In the office. There was other people outside of the office, but in the office with Mr. Patterson and Mr. vanHorn.

Q. Was the door open or closed?

A. It was open when I came in, then he closed it.

Q. What was said at this time?

A. I sat down and George, the first thing he said to me was, "How many times have I warned you about leaving keys in the bus?" I wasn't quite sure what he meant but right away it come to my mind that perhaps my keys [17] were left in the bus when there were kids in the bus. I said, "Never," I said, "that's no problem, I never leave my keys in the bus."

Q. With children on the bus?

A. While I am delivering children.

He says, "I've warned you before about leaving keys on the bus."

I said, "George, you haven't. I never heard that before." I said, "Besides, I know better, I never leave my keys in the bus. I know it's an obvious thing."

He said, "You left the keys in the bus this morning.

I said, "When?"

He said, "When you parked the bus in the garage."

I said, "What? You're kidding." I said, "That's a common thing. The keys are left in the bus, if someone wants to pull it out, it's there." I said, "I don't believe this."

Then he dropped that subject anyways and he says, "Well, how many times have I told you about taking coffee breaks?" I said, "George, never, that's another common thing, coffee breaks are taken by me and by other drivers also." I said, "This is a brand new game to me about coffee breaks."

Now there was one incident that George did call me [18] in the office and talked to me about coffee break—well, it wasn't about a break. At that time, I think it was in December of '78 the bus was empty, I already delivered the kids and was getting ready to pick up the next busload of kids.

And we were waiting and my monitor got me a cup of coffee. I had the coffee in my hand, I started the bus and I went to the school to pick up the kids. The coffee was not drunk yet, there was still coffee left.

The kids got on the bus, I still hadn't finished the coffee and I must have delivered two or three kids with coffee and then the cup was finally empty and it was put away.

Anyway, George called me in and says, "Sam, it's not right." Well, I had a tendency to agree with him, for safety purposes. I said, "Okay, George, it will never happen again. I won't drink coffee while I am delivering kids."

As far as warnings about coffee, that's the extent of it.

Q. Continue with the conversation with Mr. Patterson.

A. He proceeded to ask me how many times I was warned about coffee breaks and I says, "Never."

At this point in time he seemed very nervous, to me he did. I mean, that's my own opinion. He seemed nervous. [19] He said, "Well, we are going to have to let you go."

And I got upset, I said, "George, you mean you are firing me?"

He said, "Yeah."

I said, "I want to know right now, George, is that coming from you or the guy upstairs?"

Q. The guy where?

A. That's the words I used, the guy upstairs. In other words, his boss.

He said, "I've got no control over this," he said, "But if you want to leave the office for five minutes, leave, and

come back in," which I did. I left the office and he closed the door.

That office is not soundproof. You don't have to talk very loud to hear what is going on. I did hear George on the phone, to who he was talking I don't know. I do not know who the person was on the phone. But he mentioned, "Sam's here. Sam did leave the keys in the bus, his tach does show that he stopped for coffee or he stopped the bus," and that's all I heard clearly.

Q. Did he identify you as Sam Santillo?

A. No, sir, he used my name "Sam".

Now I have to make a point. I think at that time I am the only Sam employed there, but anyway he did not use Sam Santillo, Just "Sam is here."

[20] Q. And then what happened?

A. Then he says, "You can come back in?" Now he seemed sterner, stronger.

He says, "You are hereby officially fired, you are hereby to get off the premises and never return." Which at that point in time I told you, I says, "I am not going to let this rest." I said, "I plan on fighting this."

I told him that I thought he was wrong, I think it's wrong for letting me go.

Oh, in this conversation while he was firing me, he did mention to me, "By the way, this was nothing to do with the union." He used those words.

Q. Was this before he made the phone call or after?

A. I'm really not sure. I hate to make a statement when I am not sure. He did make a statement, though, anyways we were in the process now of me walking out and it's all over with when Mr. vanHorn mentioned to George, he said, "I think they're nuts—I think he's nuts" or crazy or something like that, "for letting him go at this point in time because of the union meeting being held tonight. They are going to make a mountain out of Mr. Santillo."

Q. When he said, "I think he's nuts", who was he referring to?

[21] A. I'm guessing again—

MR. WELENSKY: I am going to object to the question.

Q. Was he referring to you?

A. No.

MR. WELENSKY: I object to the question.

JUDGE FISH: What is the objection?

MR. WELENSKY: He is asking who Mr. vanHorn was referring to.

JUDGE FISH: I'll sustain the objection. The statement will speak for itself. He doesn't know who he was referring to.

MR. KENNEDY: Excuse me, Your Honor. I was just trying to establish he was not referring to Mr. Santillo. There was only three people in the office—Mr. vanHorn, Mr. Patterson and Mr. Santillo.

The witness' testimony was Mr. vanHorn said, "he's nuts." I wanted to establish the only two people he could be referring to are—well, Mr. Santill or somebody else. That is all I was trying to establish.

JUDGE FISH: You can't establish that by asking his opinion on who he was referring to. You ask him what the statement was, and it is my business to judge who he was referring to.

Q. (by Mr. Kennedy) Continue with what Mr. vanHorn [22] said.

A. That was about the extent of it.

JUDGE FISH: Would you repeat again what he said.

THE WITNESS: He said, "I think he's nuts for letting him go at this point in time because there is going to be a union meeting held tonight,"—and how they knew about that, they knew—

JUDGE FISH: Just the conversation.

THE WITNESS: "He's nuts, don't let him go now. There's a union meeting being held tonight and they are going to make a mountain out of Mr. Santillo." Those are the words.

JUDGE FISH: Continue.

Q. (by Mr. Kennedy) When, if any time, other than the incident you related involving the coffee in your hand while driving the bus, were you ever spoken to by management about coffee breaks, either told a rule about it or rebuked about it or anything?

A. Not to my recollection, Mr. Kennedy.

Q. You were never told, other than that?

A. Never.

Q. What coffee breaks do you take?

A. I took one in the morning in between runs, and then there was an afternoon runs. I would take one between runs there in the afternoon. And then I had an [23] after-

noon run which consisted of—well, it was an additional run, and I took one then.

Q. that was the run into Chicopee?

A. Yes, the one in Chicopee. But to call it a coffee break, you can u-e those terms, but what it was was a bathroom break.

Q. What would you do?

A. The run went right by my house. I would stop the bus and run into the house and I would go to the bathroom. I probably spent all of 10 minutes, I don't know. I didn't keep track of the time.

Q. The coffee breaks you took in the morning and in the [24] afternoon, how long were they?

A. Oh those were 10 minutes, those I know.

[27] From Springfield get on 291 and shoot into—I forgot the name of the school but it's a school in Chicopee and these were older people, retired people that worked this job. I used to go there arriving around four, I think they got out at 4:10, it was pretty close to when I got there and when they got out and I would take them home, each house, and drop them off.

When my last child was dropped off it was right around the corner from my house, and I would stop my bus and pull the key and go into my house and go to the bathroom. I could testify I know I spent at least 10 minutes there, I know I did, at my house.

And I used to get back in the bus and go back to Transportation Management, once again park the bus in any open hole I see and off I went to my home.

[29] Q. Have you seen other drivers leave keys in their buses [30] within the garage?

A. Sure. I never check it but I have seen it, yes.

Q. And this is in the garage itself?

A. Yes, sir.

Q. And that is where you had the habit of leaving the keys in the ignition at the end of your run, in the garage itself?

A. Yes, sir.

Q. Were you ever told prior to your discharge not to do this?

A. Never.

CROSS-EXAMINATION

Q. (by Mr. Welensky) Did you give a signed statement to any representative of the National Labor Relations Board concerning this matter?

A. I am not quite sure what you mean.

Q. Did you ever make an affidavit, give a signed statement to anybody from the NLRB?

A. Sure.

MR. WELENSKY: May I have it?

MR. KENNEDY: Let the record show I am turning over one affidavit of Sam Santillo.

[31] Q. Did you have a bus that was regularly assigned to you for say the last few months prior to your discharge? Did you have the same bus pretty much every day?

A. Yes, sir.

Q. And what bus was that? Did it have a number?

A. Yes, B-219.

Q. And did you have the same route the last three months of your employment?

A. Yes, sir.

Q. Do you kno when the working tachograph was put in the bus just prior to your discharge?

A. A week to two weeks maybe before.

[32] Q. A week or two weeks before?

A. Yes, sir.

Q. Was it put in prior to any union activities by you.

A. Yes, sir, that's right.

Q. So the tachograph as put in prior to your engaging in union activities, right

A. I believe so, sir, yes.

Q. In fact, isn't that what you aid in the statement that you gave to the NLRB, that that new tachograph was put in prior to your union activity?

A. Yes, sir.

Q. And you were paid $6.15 an hour, is that correct?

A. Yes, sir.

Q. Isn't that the same rate that is paid to all the drivers in Springfield?

A. According to bus size.

Q. For everybody driving the same size bus you drove got $6.15 an hour?

A. Yes, sir.

Q. So you weren't getting $6.15 an hour as a merit, there was no merit increase to get to this $6.15 an hour, that was the standard rate?

A. That was the rate, sir.

Q. Prior to the tachograph being put in your bus, just prior to the end of your employment, how many hours [33] a day were you being paid for?

A. Five and a half!

Q. You are positive of that?

A. Yes, I am.

Q. It couldn't have been six and a half, could it?

A. No, sir.

Q. You couldn't be mistaken on that?

A. No, sir.

Oh, wait a minute, what am I talking about? Yes, six and a half—I'm glad you brought that up—six and a half. You are correct.

Q. And you had been paid for six and a half hours a day for at least the last three months of your employment.

A. Yes, sir.

Q. With regard to your union activities, you weren't the first person to contact the union, were you?

A. No, I went to the firm with someone else prior to me.

Q. Were you told that someone else was?

A. Yes, I was.

Q. Who was that?

A. David Wands.

Q. Is he an employee—or was he an employee of Transportation Management at the time?

A. Yes, he was.

[34] Q. How many cards did you have signed by the end of the week of March 23?

A. Cards signed? I don't understand what you mean.

Q. Authorization cards?

A. Approximately seven.

Q. And these are the cards you picked up on Tuesday, is that correct?

A. Yes, sir.

Q. So by the end of the week Friday, March 23, you only had seven cards signed, is that right?

A. Yes, sir.

Q. You testified previously that you had a phone conversation on Friday, March 23 at about 6 o'clock with George Patterson, is that correct?

A. Yes, sir, I did.

Q. And that you had called George Patterson—you initiated the phone conversation?

A. Yes, sir, I did.

Q. That you initiated this because of something Ed West had told you?

A. Yes, sir.

Q. Is West related to you?

A. He is now, sir. I married his sister.

Q. So he is your brother-in-law?

A. Yes, sir.

[35] Q. And you live in the same house?

A. Yes, sir. He resides with us.

Q. Are you sure that call took place at six o'clock in the evening?

A. Pretty sure. I had thoughts the call might have been made Saturday morning too, but I'm pretty sure. Yeah, I'm going to hold with Friday. I know I made the call.

Q. friday at six?

A. Yes.

Q. Isn't it a fact that Ed West was at the garage at about six o'clock on Friday to go to New London?

A. I am not sure where he was. The call was made after I was home, though. my call to Mr. Patterson was made—

Q. After Ed West had gotten home?

A. Yes, sir. And he related to me what Mr. Patterson said to him.

Q. And in this conversation you say something was said about Patterson said, "I am going to have to pretend that I'm mad at you."

A. Yes, sir.

Q. In fact, didn't that conversation take place about 11 o'clock in the morning?

A. Saturday morning?

Q. Friday morning?

[36] A. That's possible too. It was after I got home—

Q. The question simply is, isn't it possible?

A. Yes, it is.

Q. As a matter of fact you are not even sure why that call took place, are you?

A. Yes, I am. I am definitely sure why it took place.

Q. In your statement that you gave to the National Labor Relatons Board do you recall this statement, "Also on the 23rd for some reason that I don't recall, I was talking to Patterson on the phone at about 11 a.m. in between runs. During this conversation all that I remember is that Patterson told me 'when you come in on Monday I am going to have to pretend I am mad at you' and he made some reference to the call never taking place."

A. Okay, yeah, I made that statement.

Q. You made that statement?

A. Yes, sir.

Q. There is no other question before you.

A. All right.

Q. So you did make the statement that you don't recall why the phone call took place?

A. Yes.

Q. Where did you make that call from?

A. My home.

Q. From your home?

[37] A. Yes, sir.

Q. And you think it was at 11 a.m. or do you think it was at 6 p.m.?

A. It's possible, sir.

Q. It's possible 11 a.m.?

A. I'm not sure of the time. It's possible it was made then.

Q. And he said, "I am going to have to pretend I am mad at you"?

A. Exact words. And he used Monday too, "when you come in Monday."

Q. In that phone conversation that took place on March 23, whether it was 11 a.m. or 6 p.m., did you testify that the purpose of that call was to tell George Patterson not to take it personally?

A. Yes, sir.

Q. Did you ever have any other conversation with Patterson where you told him not to take it personally?

A. No, sir.

Q. Do you recall in your affidavit that you gave to the NLRB stating, "A few days after my discharge on March 26 West also told me that Patterson had said to him, 'I am taking this personally. I have done so much for Sam, I don't know why he is doing this to me.' I called George when I found this out and told him not to [38] take this personally."

Do you recall making that statement?

A. I made that statement, but did you say after I got discharged?

Q. I have read the statement.

A. Could you read that again, sir? I want to hear that again.

Q. Sure. "A few days after my discharge on March 26 West also told me that Patterson had said to him, 'I am taking this personally. I have done so much for Sam, I don't know why he is doing this to me.' I called George when I found this out and told him not to take this personally."

Do you recall making that statement?

A. Hold it.

Q. Do you recall making that statement?

A. No, I don't recall making that statement before my discharge, no, sir, I don't. I don't recall that at all, not before my discharge—I mean after my discharge.

Q. Was this the statement that you gave to the NLRB?

A. Which one are you talking about, sir.

Q. I am just asking you if that is the statement that you gave to the NLRB?

A. Where is the statement we are talking about?

[39] Q. I am asking you if this whole affidavit is?

A. Yes, sir.

Q. Is this your signature on that page?

A. Yes, sir, that's my affidavit.

Q. And these are your initials at the bottom of this page?

A. Yes, sir.

Q. Would you read starting here—

JUDGE FISH: What page are you referring to?

MR. WELENSKY: The bottom of 4 and the top of 5.

JUDGE FISH: Show it to him and let him read it.

Q. Would you read it aloud, please?

A. "A few days after my discharge on March 26 Ed West also told me that Patterson had said to him, 'I am taking this personally. I have done so much for Sam, I don't know why he is doing this to me.' I called George. . .—

Q. You'll have to speak up.

A. Do you want the rest of this?

Q. Right down to the bracket.

A. I called George when I found this out and told him not to take this personally.

Q. And that isyour initials on that page?
A. Yes, sir, it is.
Q. Do you recall making that statement?
[40] A. Yes, sir.
Q. Now you referred before to a situation where the monitor had obtained a cup of coffee for you which you took on the bus with you?
A. Yes, sir.
Q. Do you recall when that took place, that situation?
A. Exact date no, I don't. I think it was late September of '78 or '79—October of '78.
Q. Did George Patterson speak to you about that?
A. Yes, sir, he did.
Q. Did he tell you how he knew about it?
A. No, he didn't. I never found out his source. I never asked him.
Q. Did he mention to you that he heard it from some official of the Springfield school department?
A. I think he did.
Q. Did he refer to a John Malone?
A. He might have. That name comes up so often because he is head monitor.
Q. Is it possible he had heard from John Maloney about this?
A. It's quite possible, yes.
Q. Did you make a statement in this affidavit that aside from this situation, did you state, "Otherwise I never take coffee breaks"?
[41] A. Yes, I did, I made that statement.
Q. And when he had this conversation with you, George Patterson had this conversation with you about this particular incident, didn't he also mention to you that he talked to you previously about taking coffee breaks?
A. No, sir.
Q. Didn't you say in your statement that you gave to the NLRB, "He went on and said, 'I have talked to you about taking coffee breaks before"?
A. He might have made that statement, sure.
Q. He did make that statement?
A. I forget.
Q. Did he say he made that statement?
A. He did, all right.
Q. Back then you had a working tachograph on your bus, is that correct?

A. Back then when?

A. In September of and October of '78?

A. I'm not sure. I just drive the bus.

Q. Didn't you also state in this affidavit that in that same conversation you stated, "He then began to trace my steps on the tachometer and I replied, 'that's when I am waiting for kids or when they are coming out of school"?

[42] A. Yes, sir, I made that statement.

Q. So you did have a tachograph at that time, or a tachometer?

A. Are you talking about the time—no, sir.

Q. You didn't?

A. No.

It doesn't refer to that. That refers to my tachograph that he pulled from the bus when he fired me. That's what that refers to.

Q. When he said to you, "I have talked to you about taking coffee breaks before," did you respond, "Well, George, I may have stopped at a restaurant or something to use the bathroom but that is the extent of it?"

A. Yes, sir I made that statement.

Q. In fact, weren't you denying that you ever stopped for coffee breaks?

A. At that time yes, I was.

Q. And, in fact, you had been taking coffee breaks?

A. Yes, sir, I was.

Q. So when you made that statement that you were only stopping at a rest room to use the bathroom but that is the extent of it, in fact, you weren't telling the truth at that time, were you?

A. At that point no, sir, I wasn't.

Q. When you got called in on March 26 by George Patterson [43] because he said he wanted to talk to you, you testified that you were concerned you might be fired, is that correct?

A. Yes, sir.

Q. And you contacted union representative because of this fear?

A. I went to see him, that's right.

Q. In fact, did n't you say to George Patterson that the real reason you were being fired was because of union activities?

A. No, sir, I never made that statement.

Q. But you believed that, is that correct?

A. Yes, sir, I believed it.
Q. You never said it, is that what you are saying?
A. To the best of my recollection, no, sir.
Q. Is it possible you might have said it?
A. Okay, it's possible.
Q. Didn't you ask Mr. Patterson to give you the reason for being fired in writing?
A. Yes, sir, I did.
Q. And what did Mr. Patterson do?
A. He said he didn't have to put nothing in writing and that ended that conversation.
[44] Q. When you stopped for these coffee breaks in that morning and the afternoon, how long were those breaks for?
A. A good 10 minutes.
Q. I'm sorry?
A. Ten minutes.
Q. Did you say a good ten minutes?
A. Definitely 10 minutes, no doubt in my mind.
Q. Did it go on longer?
A. No.
Q. You didn't exceed 10 minutes, is that what you are saying?
A. No, it didn't exceed 10 minutes. By then I am on the bus and ready for school.
Q. Now this stopping at your house in the afternoon, is that when you stopped at your home, in the afternoon?
A. More or less the evening.
Q. Well, it was before six o'clock?
A. Yes, sir.
Q. Before bringing the bus back to the garage?
[45] A. Yes.
Q. Had you completed your run at that time?
A. Yes, sir.
Q. By the way, are there rest rooms back at the garage?
A. Yes, there are, sir.
Q. How long is it from your house to the garage?
A. Fifteen or twenty minutes. It all depends on the traffic.
Q. You were stopping at your house before going back to the garage, is that correct?
A. Yes, sir.
Q. How often were you doing that?

A. A good three times a week at least.
Q. At least three times a week?
A. Yes.
Q. Could it have been four or five times a week?
A. Yes, sir, it could have.
Q. And how long were those stops for?
A. Ten or fifteen minutes.
Q. So those stops exceeded 10 minutes?
A. It's possible, yes, on some occasions they did.
Q. Could they have been as long as 20 minutes?
A. I don't think so.
Q. Possibly?
A. Possibly.

[46] Q. In your statement didn't you mention that you only stopped at your house about twice a week?

A. Yes, I did.

Q. Did you also make the statement in your affidavit that the longest the bus has ever been at your house was for 10 minutes?

A. Yes, sir, I made that statement.

Q. And that was a sworn statement you gave wasn't it?

A. Yes, sir.

Q. Now you are saying that your stops were 15, possibly even 20 minutes, is that correct? Isn't that what you are saying now?

A. I still want to stick to 10 minutes, but you are using the word "possible." Anything is possible. I mean, it's possible it's 15 minutes.

A. Maybe I am confused. let's see if I am confused on this. I thought you testified that your break in the afternoon at your house were for 10 minutes to 15 minutes and I asked you if it was possible even longer, could they possibly have been 20 minues.

A. And I just said that was possible.
Q. It's possible they were 20 minutes?
A. It's possible.

[47] Q. (by Mr. Welensky) On the way from the last drop off of the day, is it an absolute direct line back to the garage by your house?

A. Yes, sir.

Q. You don't have to make any turns or go off—

A. There's one quick turn and that's it, right on my street.

Q. Do you know how much time once the tachograph was installed in the last two or three weeks before your discharge, do you know how long the tachograph shows you were actually working? Do you know how many hours it shows?

A. I am not sure.

[49] Q. Did Mr. Patterson ever speak with you about taking the bus to your home, taking that break at home?

A. No.

Q. Never spoke to you about that?

A. No, sir.

Q. Did Mr. Patterson ever tell you that he received information from people that live on Alcon Drive that you had been bringing the bus home?

A. No, sir, he never mentioned it to me.

[50] Q. to your knowledge were you paid for the time when you were at home in the afternoon on that break?

A. I have to explain that, okay?

Q. Well, let me ask you this. Prior to the tachograph being put in just prior to your discharge, were you paid for that time?

A. Yes, sir. But it wasn't for that time—I have to explain it.

THE WITNESS: Again, that tachograph, sir, shows when that bus is moving and when it is not moving. There is time that I put in in the garage—a lot of [51] other drivers put in too, but I personally put in that I was not getting paid for.

MR. WELENSKY: I'll move to strike the answer. The answer is not responsive to the question. The question was, are you paid for the time. His answer should be yes or no. The answer he gave a yes answer, the explanation—

JUDGE FISH: He gave an explanation and I will allow it to remain.

Continue.

MR. WELENSKY: I take it my motion to strike is denied?

JUDGE FISH: Yes.

Q. (by Mr. Welensky) You did hear from a neighbor, didn't you, a neighbor on Alcon Drive that George Patterson was making an inquiry into finding out if you were stopping at your house?

A. No, sir.

Q. You didn't hear that from a neighbor?

A. No, sir.
Q. You didn't hear it from a Nancy Danco?
A. No, sir.
Hold it—repeat your question. I want to hear that one again.
Q. Did you hear from a neighbor of yours on Alcon [52] Drive, Nancy Danko, to be specific, who also was a coworker, that George Patterson was making inquiry to see if you were—
A. Yes, after my discharge.
Q. But you had heard that?
A. Yes, sir, after my discharge.
Q. Did you believe you were authorized to take the bus home?
A. No, I didn't. It was en route.
JUDGE FISH: I didn't hear you.
THE WITNESS: It was en route. If I was authorized to take the bus home?
Q. Yes.
A. I didn't believe that, no.
Q. Were you ever warned about leaving keys in the bus?
A. Never, that is something I never did, sir.
Q. I am talking about when the bus was brought back to the garage?
A. Never.
Q. You were never spoken to about it by George Patterson?
A. No, sir.
Q. You were never spoken to about it by Ron Sullivan?
A. No.
Q. Were you ever told not to leave the keys in the bus?
A. No, sir.
[53] Q. Were you ever told to hang the keys up on a key rack in the office?
A. I knew the keys were on the rack but I was never told to do it. I was never told it was mandatory, that that was the procedure, no, sir.
Q. You know there is a key rack in the office?
A. Yes, sir.
Q. You know that is a key rack for the bus keys, isn't it?
A. Yes, sir.
Q. You left the keys in the bus?

A. Yes, sir.
Q. And at t-he end of the day—
A. My keys go on the rack.
Q. You always leave your keys on the rack at the end of the day?
A. Yes.
Q. When you say you were never told to hang up the keys were you referring to any time.
A. Any time.
Q. At the middle of the day or the end of the day?
[54] A. I never was told by anyone to hang those keys on that rack, but that was a mandatory procedure.
Q. At the middle of the day or the end of the day, is that correct?
A. Yes.
[55] A.Q. On Saturday, March 24, you stated that you called drivers and told them there was a union meeting. Where were those calls made from?
A. My home, sir.
Q. Do you know who else was home at the time?
A. My wife, maybe a couple of my kids.
Q. No one from the company there?
A. No, not that I know of.

REDIRECT EXAMINATION

Q. (by Mr. Kennedy) Mr. Santillo, those coffee breaks you took, one in the morning and one in the afternoon at local restaurants, when you took them would you have occasion to use the bathroom facilities at the restaurant as well?
[56] A. The first restaurant was locked, employees only. The second one no bathroom.
Q. So in the afternoon then—
A. I had to go bad.

RECROSS-EXAMINATION

Q. (by Mr. Welensky) Have you ever discussed, did you ever have a conversation with George Patterson about the tachograph reading, how they read, how they paid?
A. On a previous shifts on a couple of occasions.
Q. You had a tachograph on your bus at that time?
A. On the mini-bus yes, the year before.
Q. Would you relate what those conversations were?

A. Yes. He went through his little procedure—I don't know what you call it, it's a dial thing. Again, it shows you when that bus is moving, and that's the time that the company pays you for, when that bus was on the move. no time for school, picking up kids, in between, he deducted it all. And I used to fight for it.

I used to come down and tell him, "Look, George, it's company time that I am putting in. I want to get paid for it." He never gave me a hard time about it.

JUDGE FISH: Did he pay for the time?

THE WITNESS: Yes, sir.

He ended up paying you for that time?

[59] JUDGE FISH: Just answer the question.

THE WITNESS: I never did.

Q. But the five or ten minutes you complained about you were getting paid for?

A. On the mini bus.

Because he was deducting that time on a couple of occasions.

Q. Did you think that the company ws being overly-petty by deducting that?

A. My personal opinion yes, I thought they were being petty because it was company time. It was their gas I had to get in there and their circle checks, and those children had to be coming out of school. Yes, I think it was petty.

Q. And that is why you made a complaint about it?

A. Yes.

Q. Because you felt that actually you were on the company's time, you were working?

A. Yes, sir.

Q. When you were waiting for the children you were working, is that the reason for your complaining about it?

A. Yes.

Q. But other than that you were being paid by the tachograph, according to what the tachograph showed?

A. No, there was occasions—George has put in so many hours. I'm not sure, I don't make up the payroll but [60] my checks always read the same hours. He would pay me so many hours. How he arranged it I don't know.

Q. Just coming back briefly, when you got to school and you were waiting for the kids for five or ten minutes before the bus started rolling again, you complained it was working time and you wanted to be paid for it?

A. Yes, sir.

Q. Did you also feel that way about the coffee breaks in the morning and in the afternoon?

A. No. I thought I wasn't getting paid for any of it.

Q. How about stopping at your home?

A. Same thing. I didn't think I should get paid for that and I didn't.

[62] JUDGE FISH: I just want to understand your testimony.

JUDGE FISH: Forget about gassing up. I am talking about coffee breaks and I am talking about the times that you stopped at your home to go to the bathroom. You say you did this pretty much on a daily basis?

THE WITNESS: Yes, sir.

JUDGE FISH: For that period of time, I am trying to understand your testimony, did you or did you not get [63] paid for those minutes, as far as you know?

THE WITNESS: According to the company, yes.

But there was time in the morning I wasn't getting paid for, that I had to do, I had to gas up. That's five or six minutes alone.

Secondly, I want to go over a little bit the conversation that you had with Mr. Patterson when you called him up on the 23rd, I believe, at 6 o'clock or 11 o'clock—I am not concerned with the time.

Try to tell me as best you recall how this conversation started? You called up, and you had just been told by Mr. West that what?

THE WITNESS: That he was taking—

JUDGE FISH: This was something that allegedly Mr. [64] Patterson had told Mr. West and he reported it to you?

THE WITNESS: Yes.

JUDGE FISH: So he made the statement to you and you called up Mr. Patterson—try to remember, how did you start the conversation? What did you say?

THE WITNESS: I said, "George, I would like to talk to you about—Eddie just got home and he told me you are taking this personally."

JUDGE FISH: And what did he say to that?

THE WITNESS: That is what I was trying to get across. At that point in time he said, "Call me back in five minutes. Somebody just walked in the office. I can't talk," boom.

I did, I called back in five minutes. And again I said, "George, I was told you are taking this personally and I want to tell you I still feel you are my friend and I don't

want you to take this personally. It really is between the Teamster's Union and the TMC." I said, "I can understand your position, being manager, but you and I are out of the picture."

I said, "Please don't take it personally. I like you [65] as a friend." That is what I told him.

JUDGE FISH: What did he say?

THE WITNESS: He was very nice. He said, "I understand," he said, "Just make sure that everyone you talk to understands what the Union is all about and the rates and everything."

I said, "George, I will."

He said, "Okay, Sam," he says, "by the say, I've got to pretend I'm mad at you Monday morning."

JUDGE FISH: Did he pretend on Monday morning that he was mad?

THE WITNESS: I got in in the morning, we didn't see much of each other. I got my keys, I did my route, in other words.

JUDGE FISH: Monday morning he did not pretend he was mad at you, that you can recall?

THE WITNESS: I didn't have any words with him.

JUDGE FISH: In addition, you talked about your discharge interview or discussion, and Mr. Patterson said—"by the way this has nothing to do with the Union?" I am trying to understand how that particular remark came up into the conversation.

THE WITNESS: I don't know. He just brought it up out of the clear blue sky.

JUDGE FISH: Your testimony is just out of the clear [66] blue?

THE WITNESS: We were talking about getting keys to the bus and coffee breaks and, boom, he laid it on me. Nothing to do with the union—then he proceeded back to business. But that statement was just dropped on me.

JUDGE FISH: It wasn't precipitated by your stating that you believed that it had something to do with the union?

THE WITNESS: I didn't say nothing to relate to that, sir.

JUDGE FISH: He just said that?

THE WITNESS: Yes, sir.

JUDGE FISH: What did you say after he mentioned "by the way, this has nothing to do with the union"? Did you respond to that?

THE WITNESS: NO, I made no statement at all about that. I just was concerned about getting fired, no statement about unions.

JUDGE FISH: I have nothing further.

(Witness excused.)

[67] NANCY DANKO

was called as a witness by and on behalf of Counsel for the General Counsel and, having been first duly sworn was examined and testified as follows:

Q. While you worked for Transportation Management did you have occasion to take coffee breaks?

A. Yes.

Q. How frequently?

A. About every other morning. My monitor and I used to stop and have coffee.

Q. Would you stop at a local restaurant?

A. Friendly's on Berkwood Boulevard and Bay Street.

Q. And you had the bus with you at the time?

A. Yes, we drive a mini bus.

[68] Q. And after you were through with the bus—well, let me ask that question. Were you ever spoken to by management about taking coffee breaks?

A. No, sir.

Q. Did you ever bring coffee back from the restaurant to anybody at the terminal?

A. Occasionally I would do it on my own. I used to bring George coffee, because George and I got along great.

Q. You brought coffee back to the terminal—

A. Yes, for George, when I wanted to bring him coffee.

Q. In other words, on your own, when you finished dropping the children off, you had a cup of coffee and brought some back for George?

A. Yes. Not all the time, occasionally.

Q. And on those occasions did Mr. Patterson ever tell you you not to stop for coffee?

A. No, sir.

Q. Have you ever left your bus at the terminal with the keys in it, in the ignition?

A. Yes, sir. Well, when I'd go in to bring my bus in like with something to be done, whoever is there, the mechanic,

I used to leave the keys in the bus and go in the office. And when Mr. Zimmerman came I had to drive my bus down there because I keep my bus at home, and I [69] took it down there to bring for the weekend. I left my keys in the bus, because they were calling in your buses.

Q. Were you ever told that coffee breaks were prohibited?

A. No.

Q. Were you ever told there was a company policy about leaving keys in the ignition?

A. No, sir.

CROSS-EXAMINATION

[70] Q. When you stopped for these breaks, how long were the breaks?

A. It would be from 20 minutes to a half or hour [71] occasionally, not all the time. It would vary.

Q. Do you have any knowledge of whether or not you were paid for that time?

A. Yes, sir. My time was from 7:20 to 9:20.

Q. 7:20 to 9:20?

A. There was a two hour morning and two hours in the afternoon, and I would get done sometimes early.

Q. And you were getting paid for the two hours anyway?

A. Yes, sir.

Q. Isn't there a company policy that you are guaranteed two hours every morning?

A. I guess there is, but we were supposed to put our time down anyway.

Q. But you were aware a company policy that you get a guarantee of two hours every morning and two every afternoon?

A. Yes.

Q. And after Mr. Santillo was fired, did you speak with George Patterson about Sam parking his bus down there?

A. No, I did not—about Sam parking his bus down there?

Q. Yes.

A. No, sir.

I called Mr. Patterson and I was asking him a favor.

Q. And in that conversation was there some discussion [72] about Mr. Santillo parking his bus on Alcon Drive?

A. I called Mr. Patterson to ask him if I could use one of the company vehicles.

Q. In that conversation—

A. Yes, he asked me if I had seen Mr. Santillo's bus out there and I said no, not that I know of. I mean, I know I didn't see it because I babysit and that's around suppertime, and I don't see the Santillo's until late, like after supper.

Q. You are not looking outside at that time?

A. No, sir, I couldn't even see the street anyway from where I'm at.

Q. Did he say why he was asking that question?

A. No, he just asked me.

Q. Did he make the statement he had received some complaints about it?

A. Yes.

Q. He did say that?

A. Yes, sir.

[73] Q. Do you know of any drivers that stopped at their home during their route?

A. During their route?

Q. Yes.

A. No, I don't know of anybody that stops their bus.

Q. You don't know of anybody?

A. No.

REDIRECT EXAMINATION

[74] JUDGE FISH: Were you aware of any kind of a company rule with respect to coffee breaks?

THE WITNESS: No, sir.

JUDGE FISH: When you were hired was anything said to you at all about when coffee breaks were permitted or not permitted, nothing was mentioned?

THE WITNESS: No, sir.

JUDGE FISH: You decided to take it during this period of time, you just did it on your own? Did you discuss it with other employees to see if they did it?

THE WITNESS: No, I've seen other employees doing it, so that is when I just took it for granted that I can do it too.

JUDGE FISH: You have seen other employees take breaks?

THE WITNESS: Yes, sir, I have talked to a couple. [75] In fact, I met one at a Friendly's on State Street.

JUDGE FISH: So during these times you have taken coffee breaks there have been other employees of the company there at the time?

THE WITNESS: Yes, there's a lot of them. You see a lot of them.

[74] GEORGE PATTERSON

was called as a witness by and on behalf of Counsel for the General Counsel and, having been first duly sworn was examined and testified as follows:

Q. (by Mr. Kennedy) Mr. Patterson, what is the title of your position with the company?

A. I have not been assigned an official title on a business card. I am generally considered the manager.

[80] Q. Well, let's talk about the reasons for his discharge. Are you the individual who actually made the decision to discharge Mr. Santillo?

A. Yes, sir.

Q. And you made this decision on your own without any consultation from anyone else?

A. Yes, sir, based upon my reading of the tachograph and phone calls that I had had previous to that.

Q. The phone call previous to that was involving what?

A. Phone calls previous to that were, one, a phone call from Mr. Maloney of the school department about Mr. Santillo stopping with kids on his bus to buy coffee. Two would be phone calls saying that his bus was parked in front of his house every afternoon for about a half an hour.

Q. In Maloney's case how many times did he make these phone calls to you?

A. How many times?

Q. Yes.

A. He made the phone call once about the coffee break.

[81] Q. And that was riding in the bus with the coffee in his hand?

A. No, sir. The complaint was brought to him by a parent. The youngster came home and told him that the bus driver had stopped at the State Diner on State Street for coffee. The monitor had gotten off and gotten the coffee, and drove with the coffee in one hand.

Q. And you told Mr. Santillo about this?

A. Yes.

Q. And he understood after that that he was not to drive a bus with coffee?

A. I believe he did, sir.

JUDGE FISH: Excuse me. When was this conversation?

THE WITNESS: For the record I'm not exactly sure. It was some time—Mr. Santillo said it was late October.

JUDGE FISH: What do you say, to the best of your recollection?

THE WITNESS: I believe it was the latter part of 1978, November or December.

Q. (by Mr. Kennedy) Now the phone calls to Maloney involved two, who were they?

A. One was an anonymous call who said that they were aggravated that the bus was parked blocking the entrance to Alcon Drive every afternoon and it was there for a half [82] an hour.

Q. And that anonymous call was when?

A. That was towards the latter part of February, sir.

You received another phone call. Who was that from?

A. I am not sure whether I received the phone call or if it was in a phone conversation with Sheila Kelly. I asked her if she, in fact, had seen Santillo's bus parked there and she said yes, it was there every afternoon.

And another conversation with another driver, Diane Saderopolis, I confirmed this fact that, yes, in [83] fact, the bus was parked there in the afternoon.

Q. And these were in late February, these conversations?

A. Yes, sir, between about—the drivers more accurately gave it to me at about between 5 and 5:20, or thereabouts, you know, varying from day to day, about 5 or 10 minutes.

Q. In either case did you bring to the attention of Mr. Santillo the anonymous phone call or the conversations with Saderopolis and Kelly?

A. Yes, sir, I did.

Q. When was that?

A. That was in late February. I do not recall the exact date but, again, I was quoted, "You know that when I am on that bus it is always rolling. I am not stopping.

Q. So after the conversations with the anonymous phone call and Saderopolis and Kelly you had another conversation?

A. With Santillo, yes, sir.

Q. And he assured you he was not doing that?
A. Yes, sir.
Q. Subsequent to that time did you determine that he was still doing it?
A. Subsequent meaning after that time?
Q. Yes.
A. I had ordered Mr. vanHorn to put a tachograph in his bus.
Q. Aside from the tachograph, did you have any other [84] evidence he was stopping at his house on Alcon Drive?
A. No, sir.
Q. So he assured you on two occasions that he was not doing so?
A. Yes, sir.
Q. And yet on March 26, seven days after Mr. Santillo started the union activities, you discharged him for, among others, that offense?
A. I believe Sam stated that he started his union activities on the 19th.
Q. All right.
A. Yes, I did.
Q. When did you first become aware of Mr. Santillo's union activities?
A. On or about Friday, the 23rd.
Q. How did that come to your attention?
A. Through conversations with drivers.
Q. How did these arise, these conversations? Did you go to the driver and ask him who was active for the union?
A. No, sir.
Q. They volunteered this to you?
A. Some drivers did, other drivers I did question.
Q. You what?
A. I did question about union activities.
[85] Q. The drivers you questioned, how did you go about this?
A. The one driver that comes to mind in particular. I asked him if he knew anything about the union and he said yes, he had in fact signed a card and was for the union.
Q. And what driver was this?
A. David Stebbins.
Q. What else did you say?
A. I asked him why he was for the union and he replied that it takes a giant to fight a giant. And I said, "Well, I guess I can see that point, but have you ever had any prob-

lems with this organization as far as any grievances go?" And he said, "No."

Q. You say by Friday you knew about the union activity of Santillo. Did Stebbins tell you Santillo was there?

A. No, sir, I knew about union activity that Friday.

Q. Who else did you question about the union?

A. Direct interrogation?

Q. No, just questioned in the most casual senses up to the most formal?

A. Probably several others. I have so many conversations in the course of a day that it's difficult to relate these small ones.

Q. But on these five or six occasions you approached [86] five or six different employees and asked them about the union?

A. No, sir, I don't believe I asked that many. David Stebbins is the only one that I recall directly questioning about his union activities.

Q. All the others came to you voluntarily and told you?

A. Yes, sir.

Q. Did they tell you who was the ringleader?

A. No, sir.

Q. Did you ask who the ringleader was?

A. No, sir.

Q. Was this of no concern to you?

A. It was of concern to me, but by that time I had been made aware of the procedures involving company union activity.

Q. So none of them offered it to you and you never asked?

A. Someone volunteered that David Wands had been in touch with the union. These were the drivers from the Ross School that he had approached.

Q. Did you ever go to anybody's home and ask them about the union, or anywhere away from your work set?

A. Not to the best of my knowledge. I spend probably 12 to 14 hours a day in that place. I generally like to have my own time.

[87] Q. When did you become aware that it was unlawful to question employees directly about the union?

A. I believe it was sometime over the weekend between Friday night, I believe it was Friday night—Friday night or Saturday morning.

Q. So you talked to Mr. Stebbins before that? You talked to him when?

A. I talked to him about six p.m. on Friday evening. He and Mr. West were waiting to pick up their Perkins resident runs, which left the garage at around 6:30–

Q. When did you become aware of specifically Mr. Santillo's activity in the union?

A. From his phone call.

Q. When was his phone call?

A. I believe his phone call was on Saturday morning. That was the phone call which he was not sure of the time of. It was either 11 on Friday morning or on Saturday.

Q. What was said during this phone call?

A. He called me up and he says, "George, I hope you are not taking it personally."

And I said I was a little upset, but that was the extent of it.

Q. When he said "taking it personally" what did he mean?

A. I don't know. At that time I had checked his tach and [88] found him to be stealing time.

Okay, whether he was referring to his union activities or the fact that he was stealing time I do not know.

Q. What did you say in response, now, to when he said, "I hope you are not taking it personally". What did you say?

A. After that I said I didn't want to discuss anything with him because of the rules I had been warned.

Q. But you didn't ask for an explanation when he said, "I don't want you to take it personally"

A. No, sir.

Q. And you didn't know what he meant by it either?

A. No, sir. He was either referring to his stealing time or his union activities.

Q. But you didn't know he was active in the union at that time?

A. Yes, sir, I believe I did.

Q. I thought you said the first time you learned about his union activity was in the phone call he made to you on Saturday morning?

A. You are questioning me about that phone call?

Q. That's right. And in that phone call—correct me if I'm wrong—he said, "I hope you don't take it personally." did he preface that remark by anything about unions?

[89] A. Not to the best of my knowledge.

Q. You got a phone call at work on a Saturday morning from an employee who opens the phone call saying, "George, I hope you are not taking it personally." And you respond what?

A. He had told me about his conversation with Eddie West. He said Eddie West came home, he told me what was going on, he said you were taking it personally.

Q. Now try to relate the specifics of the conversation as best you recall. He called you and you said hello, he said hello and then what was said?

A. He said, "Look George,"—he gets a little excited and he came off from the shoulder—"Eddie just came home and told me about this and that"—

Q. Did he say this and that?

A. No, he didn't.

Q. What did he say?

A. I believe it was about his union activities.

Q. He said, "Eddie just came home" and told him what?

A. Non specifics about the union business. I did not believe at the time he mentioned he was a ringleader or anything like that.

Q. You see, I am trying to reconstruct this phone conversation because it may very well be that there is no dispute between you and Sam as to what was said here. [90] What is puzzling me—say it again—he started the conversation by saying what?

A. He opened up the conversation and he mentioned—

Q. Mentioned what? How did he say it? What words did he use?

A. I don't recall the exact wording at this time. He started the conversation with the fact that he had just talked to Eddie West and Eddie had related to him, that I was pretty upset about what was going on in the office Friday night.

Friday night was the night that we had the tachographs out. I realized there was a gap in the graph.

Q. You were upset about that?

A. I was upset about it.

Q. How much of a gap was there?

A. A considerable gap. I would say 15 minutes in the morning and 15 minutes in the afternoon.

Q. You don't have occasion to go over all the tachs, do you?

A. Yes.

Q. You review the tachs in any event?

A. Yes, I review all the tachs.

Q. Was his a departure significantly from others?

A. Yes. Two weeks previous I had asked—I believe it was three weeks previous, I had asked Mr. vanHorn to [91] install a tachograph in Sam's bus to investigate these complaints brought on by the phone calls.

Q. How long before was that now?

A. I believe it was three weeks before. Mr. vanHorn did not get to them that Monday morning.

Q. But I thought you had cleared up the matter of the phone calls—the issue was going to his house, if you recall, and stopping off at his house? That is what the phone calls involved?

A. Yes, sir.

Q. You didn't get any phone calls about him going in for coffee in the restaurant in the morning and in the afternoon, did you?

A. No.

Q. You were checking out whether he was at his house or not?

A. Yes, sir.

Q. And you have an automobile and it didn't dawn on you to go out there at the time that he apparently was there—it's only 15 minutes away—and check to see if he was there?

A. I also have a phone attached to my ear for approximately 10 hours a day, and 70-odd drivers.

Q. Do you have an assistant?

A. Excuse me?

[92] Q. Do you have an assistant?

A. Yes and no. I do have an assistant—

Q. You have Mr. vanHorn?

A. I have Mr. vanHorn.

Q. Another management official. Could he have gone out to see if this was true?

A. Yes, sir.

Q. The tach really wouldn't tell you what the man was doing, would it?

A. When you compared it with his route sheets, yes, you can determine from a tachograph, when you know the route followed you can determine what is taking place.

Q. You could tell on a 10 minute gap or a 15 minute gap that he would be at his home in Chicopee or having coffee, as opposed to having the engine shut off and waiting between stops?

A. Yes, sir.

Q. You could?

A. Yes, sir.

Q. How would you do that?

A. The time at which the engine in stopped.

Q. The time at which the engine is stopped?

A. Yes, sir.

Q. It would be between pick ups and deliveries, would it not?

A. The question with the stopping at home, his four [93] o'clock pick up was at Sunshine Village in Chicopee. The stops in question occurred between five o'clock and five-twenty. He generally returned to the garage at five-thirty.

Q. The question would be then, how often have you done this for employees? How often have you made checks of tachs and disciplined employees like this?

A. On a continuing basis?

Q. Yes.

A. It is done weekly when I pick up a conflict with their run. That is not to say I catch someone every week.

Q. When was the last time you fired someone?

A. For what?

Q. For doing this?

A. For doing what?

Q. Stopping off at their house presumably on the way back to the barn?

A. I have never caught anybody doing that, with the exception of Mr. Santillo.

Q. He is the first person to be discharged in the history of the terminal in Springfield for that offense?

A. For cheating on his time, yes, sir.

Q. And the day you actually called in the tachs and read them was what day?

[94] A. The tachs were read—what do you mean by read?

Q. The time you got angry with him, you said you were angry, or Mr. West started a conversation with you, Mr. West said you were upset?

A. The tach was pulled on Friday evening and at that time we determined that the stop in question was being made.

Q. So that is the time that you pulled the tach?

A. Yes.

Q. And that is the first time you pulled and reviewed the tach?

A. No, sir, I pulled the tach the previous Friday and reviewed it.

[95] Q. But not one single day during that previous week did any of the tachs indicate that Mr. Santillo was, in fact, stopping at that hour?

A. Yes, I believe they did.

Q. Why didn't you bring it to his attention then?

A. I was looking to fire him and looking for evidence to fire him from.

Q. You had determined to fire him?

A. No, I had determined to confront him with both his denial of the stops and the tachograph readings.

Q. And although you had evidence that he was doing this before March 19 when his union activity began, you chose the Monday, March 26, after you had knowledge of his union activity, is that correct?

A. Yes.

Q. On the morning of the discharge you have heard [96]Mr. Santillo testify about a phone call you made that interrupted your conversation with him?

A. Yes, sir.

Q. Who was that phone call to?

A. Mr. Richard Zimmerman.

Q. And what did you say in that phone call to Mr. Zimmerman?

A. Mr. Santillo had asked for his discharge in writing and I asked him to wait outside while I called Mr. Zimmerman and asked him what I should do, give it to him in writing or what. I had never had an employee ask for a written discharge. When someone is discharged and they ask for a written reason to collect from unemployment and so forth, I generally tell them file and then they will send me the papers and from there it will go through the unemployment process.

Q. Did you discuss with Mr. Zimmerman the reason for the unemployment?

A. Yes.

Q. Did you discuss with Mr. Zimmerman the fact that Mr. Santillo was active in the union?

A. Yes, sir.

Q. What did Mr. Zimmerman say about that?

A. Regardless—may I say something?

Q. Just tell me what he said, what Mr. Zimmerman told [97] you and what you told Mr. Zimmerman?

A. Mr. Zimmerman said regardless of what it was, get rid of him.

Q. Now there is a monitor on that school bus that Mr. Santillo was on, isn't that correct?

A. Part of the time, yes.

Q. And that monitor is paid by the City of Springfield?

A. Yes, sir.

Q. Did you ever have occasion to ask that monitor what Mr. Santillo's practices and habits were?

A. No, sir, the monitor was not in attendance when Mr. Santillo was doing his Chicopee run.

[100] Q. How can you determine whether he was stopped at a light or stopped at a school?

A. Traffic lights are generally one minute.

Q. Traffic lights are generally one minute?

A. One minute, a school drop off should take no longer than three minutes.

Q. And you are able to determine from the tach that he was not at a light, not stopped and idling for any other reason and was, in fact, stopping at a school?

A. Which time are you referring to?

Q. Because traffic lights are always one minute?

A. No, sir, I said generally they are about one minute.

Q. If he were really in a line of cars approaching the traffic light in early morning hours, rush business hours with all the traffic in the area, could it be that he was stopped at that light for in excess of three minutes?

A. Yes, but it would also show him moving up in the line of traffic.

Q. You can also determine whether he is moving up in the line of traffic as well from the tach?

A. Yes.

[102] Q. Getting back to the monitor situation, you felt fairly certain that those 10 minute breaks, one in the morning and one in the afternoon, were coffee breaks and not stops for vehicle maintenance or checking or some problem

with the school children, somebody is sick on the bus or anything of that nature? It had to be coffee breaks?

A. Well I had at that time eight days, and at approximately the same time every day the same kid got sick, he got caught at the same traffic light—

Q. Or he was in between the same schools?

A. He definitely was in between the same schools.

Q. With his bus waiting for the next pick up?

A. I do not know what he was doing.

Q. Why didn't you ask the monitor? Isn't she appointed there by the school committee, your contractor, to determine [103] that question?

A. In a subsequent conversation with John Maloney of the school department—

Q. Subsequent to the discharge?

A. No previous, excuse me—subsequent to the earlier conflict with the stopping with the kids on the bus for coffee, that would have been October, November, February, whichever, I had had a conversation with Mr. Maloney about the monitor, Shirley Gordon. And there was some question in Mr. Maloney's mind whether the monitor was actually in attendance on these runs.

It had been reported by other monitors to the monitor department that Mr. Santillo's bus was running on several occasions with no monitor in attendance and school children on board.

And Mr. Maloney also raised with me the question of Mr. Santillo—let me explain something. The pay procedure for the monitors is set up so that the monitor does a morning run, the drivers signs the card after that run. The driver does the p.m. run and the driver signs after the p.m. run, and so on for the whole two week pay period.

Mr. Maloney brought to my attention that Shirley Gordon's card looked as if it had been signed all at one time, that Mr. Santillo just sat down and signed his name in 14 different places.

[104] Q. You are getting a bit far afield. I am interested to know how Mr. Maloney determined it was signed at one time.

A. If you sign something 14 different times on 14 different days obviously you are not going to have the same pen all 14 times—

Q. If you had a suspicion he signed at one time what did you do in response to that?

A. I asked Mr. Santillo.

Q. And what did he say to you?

A. He said yes, in fact he did sign it all at one time. And I told him to discontinue that practice.

Q. And did he?

A. I did not hear subsequent to that from Mr. Maloney.

Q. Keeping that in mind, the brief history situation, [105] I ask you again, why didn't you ask the monitor to verify whether Mr. Santillo was actually taking coffee breaks or stopped by the side of the road?

A. The whole reason for that last five minute dissertation was an oath that both Mr. Maloney and I had suspected collusion between Mr. Santillo and the monitor as far as her time and attendance records go. So if one person would lie in one instance, or if Mr. Santillo would verify her attendance in one instance why would not Gordon wash the other hand?

[106] Q. And you and Mr. Maloney allowed this fraud to continue all the way up to March 26, and given that fraud never brought it to Mr. Santillo's attention as a basis for his discharge?

A. No, I brought it to Mr. Santillo's attention. No one said—there were thoughts of fraud—I brought it to Mr. Santillo's attention that he should not sign the card on a weekly or bi-weekly basis.—

Q. And he said he wouldn't do it anymore?

A. When the monitor showed up for the run.

Q. And he said he wouldn't do it anymore?

A. He agreed he wouldn't do it anymore.

Q. And yet you didn't believe him?

A. Excuse me?

A. And yet you did not believe him?

A. I did believe him.

Q. So you did believe that since that time he corrected his conduct and was not doing it anymore?

A. Uh-huh.

Q. Therefore, whatever collusion transpired—your words—they ended back when you talked to him in November or December of 1978?

A. Yes.

[107] Q. Your solution to the problem of stopping at home was to install a tachograph?

A. My thoughts of him stopping in the morning for coffee had been dispelled by his saying, "Oh, I didn't know it

was wrong. I won't do it again," period. I took him at his word.

The same with the discussion about Shirley Gordon and the time cards.

[108] Q. Two techniques, one, going out to check the precise time it shows on the tach every day that he is at his home and, two, asking the monitor what he was doing during those two 10-minute breaks. You didn't use either system of verification?

A. No, sir.

May I clarify one point?

Q. You can clarify on redirect.

A. Okay.

[109] Q. From looking at these tachs, GC3(a), the face of this tach, can you tell me the maximum speed that vehicle was travelling at?

MR. WELENSKY: I am going to object to the entire line of questioning as to the speeds some buses may have gone.

MR. KENNEDY: What grounds? If I can show that other employees were engaged in conduct far more aggregious than the employee involved herein—

[110] MR. WELENSKY: I think it's—

MR. KENNEDY:—Santillo, and were maintained on the payroll, then it goes along with the showing that there was a particular reason for eliminating Santillo from the payroll, other than the offense which they claim to carry out.

JUDGE FINS: That is a different reason for discharge.

MR. KENNEDY: That is a different reason for discharge but what I contend is that employees were maintained on the payroll for offenses far more serious, after committing far more serious offenses—

JUDGE FISH: Such as what?

MR. KENNEDY: Such as going 60 miles an hour with a school bus full of children. That is as serious an offense as is involved here, and nothing is done.

MR. WELENSKY: That is your characterization.

MR. KENNEDY: I am going to ask the witness to characterize it in a moment. It's not mine. I will question the witness as to the gradation of offenses in this regard, and I want him to testify which is a greater offense, leaving the keys in the bus in the garage or travelling 60 miles an hour with a schoolbus full of children.

MR. WELENSKY: My objection is someone driving in excess of the speed limit canot be compared with the situation where someone is fired for being paid for time—

[111] JUDGE FISH: All right, I'll allow the questions.

Q. (by Mr. Kennedy) Can you tell us the maximum speed a vehicle travels—

JUDGE FISH: Do we have these documents identified?

MR. KENNEDY: Yes, that's 3(a) that I am showing him there.

MR. WELENSKY: Rather than voice my objections to each question, let my objection stand to the entire line of questioning?

[112] JUDGE FISH: Yes.

A. This particular run—

Q. No, I asked you the speed of that vehicle.

A. I thought you had asked me to read the tach.

Q. I want the top speed—

A. The top speed on this particular vehicle is 60 miles an hour. I know the run, the top speed is gained at 4 o'clock in the afternoon after the driver had cleared her Springfield run and was on her way down Interstate 291 to Sunshine Village.

The speed restriction of 45 miles an hour applies only when loaded.

[113] THE WITNESS: To his question going over 45 miles an hour, there are momentary peaks both morning and afternoon when the driver does go up to 45, sometimes 47 or so. But as you can see it's a time versus speed, so a sharp peak would be for a small length of time.

Q. Showing you General Counsel's 3(d), addressing your attention to the period of time that appears to be from 8:30 to 9:30, can you tell me the speed in that period of time?

A. We do have some speeds going up to as much as 50 [114] miles an hour.

Q. Rather constantly during that period of time?

A. Peaks, yes, sir.

Q. And school children are on the bus at that time?

A. Yes, sir.

Q. Were you aware of these?

A. Yes, sir.

Q. You knew about these speeds on Miss Strobells'—

A. Not those in particular. If you look more deeply into your batch of tachographs you'll probably find some of the

GMC buses with speeds of up to 80 miles an hour. These instruments are regulated from a drive gear from the transmission, like the speedometer on your car. You put on a different snow tire, you get a change in speed, a different drive gear for different rear end, and so on and so forth.

The speeds of the busettes in particular were never taken as a firing offense for anything because I realize that sometimes the speeds are wrong. On the other hand—

Q. In other words you are saying this tachometer is a somewhat unreliable instrument?

A. The tachometer itself is not unreliable. The matching of the snow tires and the gears of the transmission. When you change snow tires you should go through and change drive gears.

[108] Q. So you are saying although the instrument itself is properly functioning and the automobile is a properly functioning automobile, but the meshing of the two can, on occasion, rather constant occasion, result in inaccurate findings in the tachograph?

A. Will consistently, yes.

Q. So you never bothered to check—by the way you identified these as Miss Strobell's. I show you 3(b).

A. I believe Strobell was driving that bus at that time.

Q. You said if I went through all the rest of these I will find several more of these where the speeds are in excess of 40 miles an hour or in excess of 50 miles an hour?

A. Yes, sir, I believe one example that sticks in my mind is bus number 88 and 89.

Q. I understand now the other reason for discharge was he left the keys in the ignition at the terminal at the close of the day, is that right?

A. One of the other reasons was he had been repeatedly warned not to leave the keys in the bus. I explained to him the reasoning behind this, as it was turning to spring we were leaving the garage doors open. I didn't want any of the buses disappearing in the middle of the day.

[116] Q. Did you post any rules about this matter?

A. No, sir.

Q. Did you ever post any rules about the coffee breaks?

A. No, sir, it was taken on an individual basis.

Q. And with respect to the key incident you are satisfied the other people don't do that?

A. No, other people do do that and they are spoken to when it is brought to my attention that the key is left in the vehicle.

Mr. Santillo had a consistent habit of leaving the keys in the vehicle, and it was brought to his attention both by myself, Mr. Sulloway I believe spoke to him on a previous Thursday about keys in the vehicle.

Q. The Thursday before that Monday?

A. The Thursday before that Monday.

Q. That would be the 22nd of March?

A. Yes, it was either Thursday or Friday.

Q. What did he say to you at that time when you told him he was leaving the keys in the vehicle and shouldn't be doing it.

A. He said, "Sam left the keys in the vehicle."

Q. What did you do? Did you speak to Sam about it?

A. Yes, Id did. I have spoken to Sam on a number of Occasions.

Q. And the most recent was on that Thursday?

[117] A. Actually I believe the most recent time to date when I spoke to Sam about leaving the keys in the vehicle was Monday morning, the 26th.

Q. When you discharged him?

A. When I discharged him. I asked him where the keys to his bus were.

Q. Prior to that, the other warning on that was when, the prior Thursday?

A. I believe Mr. Sulloway spoke to him on Thursday or Friday.

Q. You didn't speak to him? Mr. Sulloways' job is what?

A. Garage dispatcher.

Q. And he came to you and told you that he had done it?

A. Yes, sir.

Q. As he told you names of other people?

A. Yes, sir.

Q. Have you spoken to them?

A. Yes, sir.

Q. Which employees come to mind that you have spoken to about this type of offense?

A. Sharon Ronco, I believe I spoke to David Wands about it.

Q. Anybody else?

A. Yes, I believe last Friday night I spoke to Joanne [118] Sliech about it.

Q. Were any of these employees discharged for that offense?

A. No, sir. It was all the first time I had spoken to any of them.

Q. You had spoken to each of the persons once?

A. Yes.

Q. How many times had you spoken to Mr. Santillo?

A. At least three or four.

Q. Spread over what period? We know the last time was when a dispatcher spoke to him on Thursday and you spoke to him about it the day you fired him. Before that how many times?

A. I do have a record. I believe he was spoken to on Thursday or Friday of the week, once by Mr. Sulloway, once by Mr. vanHorn and previous to that I can't recall the exact date.

Q. Speaking of Mr. VanHorn, are you aware of Mr. VanHorn's practice of sleeping in the vehicles while they are in the garage?

A. Yes, sir.

Q. This is on the clock, I assume?

A. No, sir.

Q. It was not while he was working?

A. It was not while he was working.

[119] Q. What time of day was this?

A. This was in the middle of the day.

Q. In the middle of the day he was sleeping?

A. Yes.

Q. Do you have a punch clock system?

MR. WELENSKY: I am going to object to this line of questioning.

JUDGE FISH: Overruled.

Q. Do you have a punch clock?

A. No, sir.

Q. Salary?

A. No, sir.

Q. How did he go about checking out to sleep?

A. It was on his time card.

Q. On his time card?

A. On his time card.

[123] Q. In terms of importance of the two offenses, leaving of the keys or the going for coffee and stopping at his house, which is the more aggregious, more serious?

A. I believe you have entirely missed—you keep asking about stopping at his house for coffee, stopping in the [113] morning for coffee, leaving his keys in his bus—you never quite to the point that I found he was stopping in the morning consistently for 15 minutes in the morning and in the afternoon, every afternoon 15 minutes or so for stealing time.

Q. Again, you have restated them and characterized them, but which is the most serious, the keys or the coffee breaks?

A. It's not a question of leaving the keys in the bus a single time, it's a question of him having been repeatedly told, given reasons, explained why we wanted to, one, see him after his run in case there were any problems with his run. See, the general procedure followed by most bus drivers is when they are clear with their run in the morning they come back in and hang up their keys.

[126] CROSS EXAMINATION

[127] Q. Now you had heard through a contact on the telephone to you that Mr. Santillo's bus was being parked on Alcon Drive every afternoon and obstructing Alcon Drive, is that correct?

A. Yes. The basic nature of the complaint was that the bus was at that time blocking the area. And as a matter of fact they added, "it's been here for a month."

Q. When you check that out with at least two employees of the company, is that correct—Sheila Kelly and Diane Saderopolis?

A. Yes.

Q. And both of those employees confirmed to you that in fact, every afternoon the bus was at Alcon Drive for some period of time?

[128] A. Yes, sir.

Q. Are both Sheila Kelly and Diane Saderopolis still working for the company?

A. Yes.

Q. Both are?

A. No, Sheila Kelly is not presently working.

Q. Diane is presently working?

A. Diane is presently working. Sheila will be doing a run on an on call basis, such as Friday resident runs.

JUDGE FISH: When did you confirm this with the employees?

THE WITNESS: That was in the conversations of late February.

JUDGE FISH: Late February you what, called them up?

THE WITNESS: I called them or they called me, or in the course of phone calls with them I asked them about this.

JUDGE FISH: And what did they tell you?

THE WITNESS: They told me yes, that it was parked.

JUDGE FISH: Every day?

THE WITNESS: Every day that they had noticed.

Q. They live on that street?

A. Yes, sir, one lives across from Santillo and one lives [129] two doors down, I believe.

Q. So Sheila Kelly lives on Alcon Drive, is that correct?

A. Yes, sir.

Q. Diane Saderpolis lives on Alcon Drive?

A. Yes.

Q. Sam Santillo lives on Alcon Drive?

A. Yes.

Q. Ed West lives in the same household as Mr. Santillo, is that right?

A. Yes, sir.

Q. That's his brother-in-law, right?

A. Right.

Q. And Nancy Danko lives on Alcon Drive?

A. Nancy Danko lives on Alcon Drive. And at the time there were others.

Q. Wait until I ask you a question, please. Now after receiving the telephone call from Mr. Maloney you brought this up to Mr. Santillo, is that correct? You discussed that with Mr. Santillo?

A. Each phone call I had from Maloney I discussed with Santillo, yes.

Q. Mr. Maloney called and said, made some statement about Sam Santillo having coffee or taking a coffee break, you discussed that with Sam Santillo, is that [130] correct?

A. Yes, sir.

Q. You also spoke to Mr. Santillo concerning parking his car on Alcon Drive in the afternoon, is that correct:

A. Yes, sir.

Q. And he denied that he was doing that, is that correct?

A. Yes, sir.

Q. Did you speak to Mr. Santillo about taking coffee breaks or breaks during the day, other than stopping at his house?

A. Yes, sir.

Q. And he denied doing it?

A. Yes.

Q. And when you questioned Mr. Santillo about this, he made the statement to you that the bus was rolling the whole time it was out, is that correct?

A. Yes, sir.

Q. Did Mr. Santillo have permission to make a stop at his house? Did you ever give him permission?

A. No, sir.

Q. To your knowledge was he given permission to make that stop by anybody else?

A. No, sir.

Q. Do you know if he was ever specifically told not to [131] make that stop?

A. No, I do not believe he was ever told not to make the stop.

Q. Now the first tachograph that was installed was March 12, 1979?

[132] A. Yes.

Q. And you stated that that was the test graph?

A. It was a test graph in the instrument when it was installed.

Q. And that had really, instead of having seven discs it only had three, is that correct?

A. That's correct.

Q. Is there a reason that you had a new tachograph, new instrument put in his bus on March 12?

A. Yes.

Q. What was the reason?

A. The complaints of him stopping at his house after his afternoon run, before returning the bus to the garage.

Q. You were concerned about—even though he had denied he was stopping—you were concerned that it wasn't true?

A. Yes, sir.

Q. Now drivers who have properly working tachographs in their buses, how are their hours determined for pay purposes?

A. Their hours are determined by reading the individual graph discs for the day in question.

Q. Are they paid according to the time on the tach? Is that essentially it?

[133] A. Yes.

Q. Now after the discs that came with the tachograph that was installed on March 12, were new discs subsequently put in?

A. Yes, they were installed on the previous Monday, or the following Monday, rather.

Q. That would have been March 19?

A. Yes.

I know we had discs for each day of the week for that next week beginning March 12.

Q. March 19?

A. That's correct.

Q. On the discs on the graphs for the week beginning March 19, you read those graphs?

A. Yes.

Q. Now you have heard Mr. Santillo testify that previous to having a working tachograph he was being paid for six and a half hours a day over a period of time. According to your reading of these graphs, was Mr. Santillo working six and a half hours a day?

[136] Q. (by Mr. Welensky) Mr. Patterson, again, based upon your reading of the graphs for the week beginning MOnday, March 19, according to your reading of these graphs did Mr. Santillo work six and a half hours each day?

A. No, sir.

A. Did he work less than six and a half hours each day?

[137]Yes, sir.

Q. What was the average time per day worked?

A. It was probably about six hours a day.

Q. Mr. Patterson, do you fill out a time sheet for payroll purposes that goes to the Medford office of the company?

A. Yes, sir.

Q. Did you fill out such a sheet for the week ending 3/25/79?

A. Yes, sir.

Q. And is this the sheet that you filled out?

A. Yes, sir.

Q. Did you put down the times for Mr. Santillo each day of the week Monday through Friday?

A. Yes, I did.

Q. Are these the times you recorded?

A. Yes.

Q. Are these times based upon your recording of the tachograph on each bus?

A. Yes.

MR. WELENSKY: I would offer that time sheet in evidence as Respondent's Exhibit 1.

[138;b JUDGE GISH: May I see it?

These hours are what, the hours he actually worked?

THE WITNESS: Those are the hours actually worked off the tachometer.

JUDGE FISH: For this week here?

THE WITNESS: Yes.

JUDGE FISH: And he was just paid for those hours?

THE WITNESS: Yes, sir, that was computed the same way that it was for our other drivers.

JUDGE FISH: But all the other weeks that Mr. Santillo was stealing time he was not paid for the extra time, or he was paid for it?

THE WITNESS: No, he was paid for six and a half hours.

JUDGE FISH: The other weeks?

THE WITNESS: The other weeks, yes.

JUDGE FISH: But not this week?

THE WITNESS: Not having a working tachograph, I asked him what his hours were for that week and when he left for lunch, when he got back in the afternoon, how many hours he was paid for.

[139] JUDGE FISH: Do you have a tachograph for just certain employees, certain buses?

THE WITNESS: No, sir. All buses have tachographs. I have approximately 24 buses and I have three or four spare tachographs.

JUDGE FISH: Your objection, Mr. Kennedy, is on the grounds—

MR. KENNEDY: I have one question on voir dire that I might ask.

These questions that are darkened are Santillo's hours taken from the tachograph, is that right?

THE WITNESS: Yes

MR. KENNEDY: Did you subtract, in computing this, the 10 minute break in the morning shown as down time?

THE WITNESS: Yes, I did.

MR. KENNEDY: And in the afternoon?

THE WITNESS: Yes, I did.

MR. KENNEDY: And when he went to his house?

THE WITNESS: Yes.

[126] JUDGE FISH: Aren't we actually arguing something that is not really in dispute? Even Mr. Santillo's own testimony admits that he did not work these hours. He is not disputing—he is admitting he took these breaks, he is admitting he took the coffee breaks. The question is whether it was something that justified his discharge or not, or something that he was discharged for.

So I don't really think it's all that essential

[144] Q. To make it simpler, is that the tach that comes in the graph instrument?

A. Yes.

Q. It covers a three day period?

A. Yes.

JUDGE FISH: What is the date of that?

THE WITNESS: This would cover Monday, the 12th on this chart here, Tuesday, the 13th on this chart and Wednesday, Thursday and Friday, you see, are all run [145] together on that last chart.

JUDGE FISH: So for the first document would be March 12, March 13 and the third document would cover 14th, 15th and 16th?

THE WITNESS: Yes, sir.

Q. Is for that bus B-219?

A. Yes it is.

Q. And that is Mr. Santillo's bus?

A. Yes, it is.

[146] Q. And would the inaccuracy you were talking about before relating to the Dodge busettes?

A. They were related to the Dodge busette, or any of the Chevy busettes, which the snow tires have been mounted on.

[147] Q. As far as you know, to your knowledge was the tachograph on Mr. Santillo's bus properly operating?

A. At what period of time?

Q. The last two weeks of his employment?

A. Yes, sir.

Q. When you took out the graphs for the week ending March 25, you testified that it did show your break in the afternoon, is that correct?

A. Yes, sir.

Q. And it also showed a break in the morning, is that correct?

A. Yes, sir.

Q. Now the route that Mr. Santillo is driving at the time of his discharge, how long approximately had he been driving that route?

A. There are minor route changes, additions or deletions, but the major run in question was the Chicopee run. And he had been driving that since December.

Q. So he had been driving the same route since December of '78, is that correct?

A. Yes, sir.

Q. So that is a period of three or four months, is that correct?

A. Yes, sir.

Q. So the last full week that Mr. Santillo worked with [148] a properly working tachograph in his bus, and that tachograph showed he was working approximately six hours each day, is that correct?

A. That's correct.

Q. And previous to that he, without a working tachograph in his bus, had been getting paid for six and a half hours a day-is that correct?

A. That's correct.

[149] Q. You testified you told him there were two reasons. One was the cheating on his time, the other was leaving keys in the bus. Is that correct?

A. Yes, sir.

Q. Did Mr. Santillo make any statement to you that he had contacted the union representative before coming in?

A. Yes, he did.

Q. And what did he say?

A. He said, "I was on the phone with the union"—I believe he said in Boston, "And they told me to call back. I told them that you were looking for me and they told me to call them back if, in fact," he got terminated.

Q. When you told Mr. Santillo the reasons he was being fired did he make any statements at that time?

A. Yes, he said "that's bullshit, you are firing me for union activities."

Q. And what did you say at that time?

A. I said, "I am not firing you for the union activities."

Q. Did he then ask you for a written reason for his [133] discharge?

A. Yes, he did.

Q. And what happened then? Did you give him a reason for his discharge?

A. No, I did not.

Q. Did you contact anybody about that?

A. Yes, I did.

Q. Who did you contact?

A. I contacted Mr. Richard Zimmerman.

Q. And did you tell him Santillo wanted a reason for his being fired?

A. Yes, I did.

Q. And what did he tell you?

A. He told me, "We don't have to give him a written reason. Ask him to leave the premises. Tell him he is not wanted back on the premises again."

Q. So you said that it was not because of the union after he had stated to you that he believed he was being fired because of the union, is that correct?

A. Yes, sir.

Q. And later that day did Mr. Santillo return?

A. Yes, he did.

Q. And was he with anyone else?

A. He was with John Adamski from the Teamsters union, and another member—another man was with them who I [151] couldn't identify.

Q. And what took place? Did you have a conversation with these people at this time?

A. Yes, I did.

Q. What was that conversation?

A. They came in, sat down in the office and said, "Why did you fire Santillo?" I told them I believe I did not have to discuss it with them. And they said, you're right, you're in a lot of trouble. You better have somebody from your main office give me a call, and Mr. Adamski left me his card, repeating his warning again as he left.

Q. You stated it was Mr. Santillo's habit to leave the keys in his bus, is that correct?

A. Yes.

Q. Are we talking about when he brings the bus back to the garage?

A. Yes.

Q. And you stated that Mr. Santillo had been spoken to about leaving the keys in the bus, is that correct?

A. Yes, he had.

Q. Had been spoken to the week before, is that correct?
A. That's correct.
Q. Was leaving the keys in the bus the main reason Mr. Santillo was fired?
[152] A. No, sir.
Q. What was the main reason he was fired?
A. Stealing time.
Q. It's correct that you knew that Mr. Santillo was in favor of the union?
A. Yes, sir.
Q. Did you know of other employees who have been favorable to the union?
A. Yes, I did.
Q. Do you know the names of those employees?
A. Yes. The last couple of days I had been writing a list, is it okay if I look at it?
Q. Would you refer to that list and tell us what other employees you knew were in the favor of the union?
A. Bob Allery, B. Arsanault, Marjorie Bailey, Joey Baer, Nancy Cook, Beverly Dudley, Edward Fleming, Mildred Hanson, May Holmes, Kenny Johnson, Robert Jencks, Judith Keeley, Ruth Levalley, Jenny Matavwitz, Rubin Nunez, Hilda Roughgoden, Mr. Santillo, Sue Strobell, Linda Soderbaum, David Stebbins, Ed West, Debbie Ward and of course David Wands.
Q. Did you have any belief as to who was the prime mover behind the union movement in the company?
A. Yes.
Q. And to your knowledge who was that person?
[153] A. David Wands.
Q. And how did you receive this information? How did you know that?
A. Through drivers coming to me, talking to them about it at Willy Ross School for the Deaf.
Q. You had been informed by other employees about Mr. Wands?
A. Yes.
Q. Is Mr. Wands still employed?
A. Yes, he is.
Q. The names on the list that you have read of people you knew that were for the union, would you recite the names of the people who are still employed?

A. Allvery, Arsenault, Bailey, Cook, Dudley, hanson, Johnson, Jencks, Keeley, Levalley, Matavwitz, Nunez, Roughgoden, Strobell, Soderbaum, Ward and Wands.

Q. Beside Mr. Santillo were any of the employees on that list fired?

A. No.

[154] REDIRECT EXAMINATION

[161] Q. By that time you knew of Santillo's involvement in the union?

A. By which time?

Q. By Friday or Saturday.

A. Yes, I believe I already testified to that.

Q. Was it Friday or Saturday that you knew about it?

A. Saturday.

Q. The conversation with Mr. West?

[162] A. No.

Q. You don't recall any conversation with Mr. West?

A. I recall a conversation with Mr. West on Friday night. I do not know what the conversation was.

Q. Didn't it involve Mr. Santillo?

A. Yes.

Q. Didn't it involve his union activity?

A. It could have. I do not recall.

Q. So you knew about Mr. Santillo's union activity by Friday?

A. By Friday 6:30 or so.

[163] MR. KENNEDY: One brief moment and I think I will be able to wrap this up.

Q. Just to get the timing correct, the tach from Mr. Santillo's vehicle was installed what day—Monday, March 19 was the first full week of the testing period, is that correct? The week ending March 25—

A. What do you mean by tach?

Q. The operating new tachometer?

A. The new tachograph was installed on the 12th.

Q. But the week of the 19th was the week that you used for testing, right, for purposes of his discharge?

A. Could I look at my calendar?

[164] Q. Sure.

A. Right, the 19th was a Monday. That would be the actual graph that was used.

Q. That was the graph that was used. Did you tell Mr. Santillo that the tach was being installed?

A. I believe Mr. Santillo was standing over Mr. van-Horn when it was installed.

Q. On the 12th?

A. On the 12th.

EXAMINATION

[165] Q. (by Judge Fish) I am a little puzzled by your testimony pertaining to your knowledge of the union activity of Mr. Santillo. I am unclear about it.

You said a number of times that you clearly knew about his union activities prior to his discharge. I am not exactly clear on how you knew—what was it that you knew with respect to Mr. Santillo?

A. That he was in favor of the union.

Q. On the basis of what did you make this decision?

A. I had had many conversations with very many drivers [166] When he asked me specifically, this one told me about this one—

Q. I am trying to understand—

A. I could name some of the drivers who told me about union activities but I couldn't tell which one was specific with which person.

Q. So what you are saying is that other drivers mentioned to you that Mr. Santillo was in favor of the union?

A. Yes.

A. And you have no recollection of the circumstances? I am trying to understand in what context an employee would come to you and say, "Hey, Mr. Santillo is in favor of the union," or these other employees. I am trying to get some idea of what happened.

A. Drivers would come in and say, "Well Dave Wands is trying to get a union together; he is talking to all the girls."

Q. This is your other employee?

A. This is David Wands, right. And this was another employee who volunteered.

Q. You don't remember the name?

A. I believe it might have been Diane.

Q. So Diane came to you and said, "David Wands—

A. David Wands is trying to get a union together down [167] at the school. And I said, "okay.'

Q. You just said okay?

A. What else could I say?

Q. Just try to remember. Give me your best recollection of what you said.

You said "okay" or something to that effect?

A. I said, "okay", listened and then I called the main office and said, "Well, we've got the same union thing down here too." They said don't worry about it.

Q. And with respect to Mr. Santillo, the employee would just come to you out of the blue and say, "Hey, Mr. Santillo is active on behalf of the union", or what? Why would they come to you?

A. Why would they come to me?

Q. Yes.

A. I try to treat my employees very fair. I have what I consider a lot of close friends among the people that work for me. They came to me on their own, or mentioned it to me in the course of conversations. It's kind of tough to describe what my job is like, but at times I am holding four conversations at the same time, one on the phone, one on the radio and two people in person asking me questions. And that goes on for about 12 hours a day.

The time that I have to sit down with the person on [168] a one to one basis is limited, so they generally call me and there's two more waiting to talk to me. There are other employees who came to me and mentioned that they had been approached by different people at the union or about the union.

Q. They had been approached by other employees?

A. By other employees about the union.

Q. Did they ask you what should they do about it, or what your view of it was or anything like that?

A. Yes they did, and I said I know a little about it and there's not too much I can do. And there were several employees mentioned who had talked to them at various schools.

Q. Some of these people told you that Mr. Santillo was among those who had approached them and tried to solicit their support for the union?

A. I believe one or two told me that Santillo had approached them and was talking about the union.

There were also others, basically the names I have mentioned were derived from drivers coming to me saying, "So-and-so talked to me at the school about the union."

Q. On all of these occasions with the exception of the ones that you testified to on questioning of Mr. Kennedy

were instances where the employees came to you and voluntarily told you they were approached by this [169] employee or that employee?

A. Yes, sir.

Q. The only time you initiated it was on that one occasion?

A. David Stebbins, yes. This is to the best of my knowledge.

Q. I want to go back to this conversation that you had on the phone with Mr. Santillo. Well, let's backtrack.

Prior to that there was a conversation with Mr. West that initiated this call with Mr. Santillo?

A. Yes.

Q. Do you recall that conversation?

A. No, I don't recall that specific conversation with Mr. West. Okay, I can recall when it probably took place was on a Friday night when he was waiting for his kids from Perkins to come in between trying to get the buses and dealing with all the stuff at six o'clock on a Friday night.

Q. You don't recall having any conversation with Mr. West in which Mr. Santillo's union activity was discussed in any fashion at all?

A. No, sir.

Q. Let's stick to the conversation between Mr. Santillo and yourself. He called you and he started out, tell me [170] again now?

A. This was—

Q. Which conversation?

A. The phone conversation?

Q. Yes, whether at 6 o'clock at night or 11 o'clock in the morning, where he told you about his conversation with Mr. West. He told you Mr. West had said he had said something to him—that is what I am interested in.

What did he tell you?

A. He told me, "Eddie just come home and told me you were pretty upset," and he says, "Look, there's nothing personal bout this. There's a lot of people who want it. I am not the person who is pushing it. Everyone wants it."

Q. A lot of people want it?

A. There's a lot of people who want it. I know you have done a lot of favors for me, like when he got thrown out of his house he come over my house for dinner.

Q. You had no doubt he was talking about the union at that time?

A. No.

Q. There was some confusion earlier in your testimony. Anyway, you didn't have any discusion with Mr. Santillo about what you had said to Mr. West or what you [171] hadn't said?

A. No, I don't believe I did. I couldn't recall the conversation.

Q. When he said to you that everybody else wants it and there is nothing personal and all that kind of conversation, what did you say to him, as best you can recall?

A. All I can recall is my warning not to discuss union activities with anybody.

Q. And did you say that?

A. No, I didn't.

Q. You don't recall what you said?

A. No, I was still rather upset.

Q. Upset about what?

A. One, I knew he was cheating on his time from the conversations and that he had lied to me in the past, and had [172] just given me, to quote him, a whole bunch of bull and I just didn't want to deal with it anymore. So the conversation ended.

Q. You were only upset about his time?

A. I was upset about the time and the union, being in about my 70th hour of work. I was pretty much upset at that time.

Q. What was the date of this conversation?

A. To the best of my recollection it was Saturday.

Q. What date?

A. Saturday the 24th.

Q. At that point had you decided to discharge Mr. Santillo?

A. It was in my mind, okay.

Q. It was in your mind when?

A. To sit down and read the tachograph, which I normally did on Monday mornings. I was in there for Saturday for some reason, I can't even recall what it was. And I was in and out.

I had glanced at the tachograph Friday right and I saw that he was stopping when he said he wasn't.

Q. Friday night you saw—

A. Friday night when I pulled the tach out I looked at it, you know, reading the tachograph takes about 15 minutes apiece to go through.

[173] Q. So you looked at the tachograph and saw these gaps?

A. Yes.

Q. But at that moment you still hadn't made up your mind to discharge him?

A. No, sir.

Q. And subsequent to this you read the tach on the 25th and saw these gaps and called him in and had the conversation?

A. I called him in and discharged him at that time.

Q. It was still on this Friday evening, you looked at the gaps on Friday evening?

A. Right, it was pulled out and I looked at it. I saw the gaps in the afternoon, which is when he had said he wasn't stopped and, in fact, the graphs showed that he was. So I was upset about that.

Q. And you had the phone call and he said what he said. Then what?

A. I believe the call was on Saturday.

Q. Saturday, okay—the end of the day Friday, five or six o'clock—

A. No, it's seven or eight.

Q. You got these tachometers in front of you and you have seen the gaps but you haven't decided to fire him yet, but you were upset.,

Then he calls either late that evening or Saturday [174] morning and he said what you testified he said. And you still hadn't made up your mind yet to discharge him?

[174] A. It was fairly well along in my mind to discharge him.

Q. Along in your mind?

A. Someone who works for you for three years, you don't dump on the end. I went through and I just thought about the whole history of what had gone on. It's not an arbitrary decision to fire someone who has worked for you for so long.

The decision was made when I came right down and read the tachograph on Monday morning.

Q. In other words, it was on your mind on Friday but you hadn't really formulated it?

A. It was in my mind since the end of February.

Q. When you put in—

A. When I had the conversations with the drivers.

Q. It was more in your mind and the conversation came and you didn't do anything about it on Saturday?

A. No.

Q. Were you in on Saturday?

A. Yes, I was in on Saturday.

Q. Why didn't you read the tachometer notes on Saturday?

A. It didn't occur to me on Saturday.

[175] Q. But on Monday it did?

A. On Monday when I do the regular payroll, as part of my regular Monday morning routine, I sit down and I read all the tachographs. And as I read them I write them down by day in the order that I come to them.

And then when I came to Santillo's tachograph I found that he was in some instances five hours and forty-five minutes, five hours and fifty minutes. That's when I said—

Q. Was your decision in any way affected by the conversation that you had with Mr. Santillo on Friday night.

A. It was hampered.

Q. I don't follow.

A. Having been cautioned against union activities, I was hesitant about firing him, and knowing his involvement in the union. I really didn't know what to do, and I spent the whole weekend one, trying to find a driver to do his run, and it's easy to get another class 2 bus driver on a moment's notice.

When I did finally, Monday morning, read the tach, find out he was really giving it to us on his times—

Q. That is what I am trying to say. You knew that Friday, didn't you?

A. I knew Friday night he was stopping, but I did not [176] know the actual extent of it, no. And Monday morning when I read it, that was it. I then decided to replace him.

Q. Did you talk to Mr. vanHorn before you did it?

A. I had Mr. vanHorn free for the afternoon.

Q. That is who you used?

A. He went out to do the run, yes.

Q. So it was Monday morning, then, after you read the tachometer when you decided that your suspicions were confirmed and he was cheating, and therefore now you had something to back it up with?

A. Hard fact.

Q. So this was when, sometime in the morning?

A. This was in the morning, yes. What had happened was Santillo had gone out on his run. I was somewhere in the office. I don't believe I saw him Monday morning. He came back. While he was out on the run the decision was made to let him go.

[178] Q. Then you made the decision without discussion with Mr. Zimmerman or any higher ups?

A. No.

Q. And then you testified, I believe, that Mr. Santillo came in or you called him in, and you informed him—

A. What was in my mind was, when he came back in from his run, when he brought his keys back to hang on the board to get him then. But evidentally he just left the keys in the bus and walked out of the garage without seeing anyone.

At that time I had drivers in with me and we called him at his home, we called him back in.

Q. Then he came back in and you told him, did you just start in by saying "you're fired" or what?

A. Yes, sir.

Q. Did you give him a reason?

A. Yes.

Q. What did you say?

A. Stopping for breaks—and incidentally I asked him where his keys to the bus were. He said, "I don't know." VanHorn went out and the keys were in the bus and I sent him out to pull his tachograph for that morning.

[179] A. He asked why he was being fired? Yes, he asked why he was being fired and I told him.

Q. And then the discussion that you testified to came up pertaining to the union, and according to your testimony it was initiated by Mr. Santillo, rather than yourself?

A. Yes.

Q. And then he asked you for a written document?

A. Then I asked him to leave.

Q. Then you called Mr. Zimmerman and had a conversation. Try to tell me as best you can recall about that conversation.

At this point Mr. Zimmerman was not even aware that you were going to fire him, is that correct?

A. No, sir, I don't believe he was. I hadn't had any conversations with him because I know if I talked to Zimmerman about the whole thing.

Q. You started off the conversation with Mr. Zimmerman. What did you say?

A. I said, "I've got a driver here and he has been cheating on his time." He says, "Do you have the graph?"

I said, "Yeah."

He said, "What else?"

I said, "He left the keys on the bus."

And he said, "Fire him."

[180] Q. Is that the extent of the conversation?

A. No. I said, "I've got union activity going on. What should I do?"

And he said, "Don't give him a reason. We haven't given one in the past."

Q. You mentioned about union activity? You said, "We have union activity going on?"

A. Yes.

Q. Did you say that the man you fired was part of the activity or was part of the union? Did you say that?

A. I don't believe I did. I'm not exactly sure. I knew he was interested in the union—interest, active, leader whatever.

Q. You didn't say any of that to Mr. Zimmernan?

A. Yes, I did, when he asked for the note. When Santillo asked me for the note, I gave him the facts as best I knew.

Q. What facts did you give Mr. Zimmerman with respect to Mr. Santillo's union activities?

A. That he was interested in the union. And the basic conversation was about the written notes.

Q. I am trying to find out—were you trying to out whether to affirm the decision to fire him, or whether you should give him something in writing?

A. Basically to reaffirm—what do you mean to reaffirm?

[181] Q. I am trying to find out why you mentioned to Mr. Zimmerman about the union if you had already made the decision to discharge. What is the difference?

A. To brief him on all of the facts.

Q. But the purpose of your call was to ask him whether you should give him something in writing?

A. Yes.

Q. So with respect to that question, you felt it was important that he knew Mr. Santillo was interested in the un-

ion, as to whether you should give him something in writing, is that correct?

A. Yes.

Q. And waht did he say?

A. He said, "No, we've never had to give anything in writing. Tell him to leave."

Q. Mr. Zimmerman made no comments about the union?

A. No, sir.

[182] Q. So it's basically your testimony, then, that the rule with respect to drivers is, they are not supposed to be taking any breaks?

A. They are getting paid to pick up kids, that is what they should be doing.

Q. And it's also your testimony it does sometimes go on, but whenever the company finds out about it they take steps to stop it?

A. Steps are taken to relieve it, yes.

Q. What steps has the company taken?

A. In which instance?

Q. In any instance?

A. In the case of Mr. Santillo he was told not to do it.

Q. Let's talk about that. In the case of Mr. Santillo, you say has been a problem for how long?

A. When it was first mentioned that he had stopped for coffee and he said he was not going to do it, I figured it was solved then.

Q. That was some months back?

[183] A. Yes, some months back.

Q. You said he shouldnt be taking coffee breaks. He at that time—

A. Said, "I don't know it was wrong. I won't do it."

Q. He didn't know it was wrong and promised that he wouldn't do it?

A. He said he would stop, yes.

Q. And he did stop for awhile, or you don't know?

A. We don't know.

Q. You didn't hear anything about it?

A. I did not hear to the contrary.

Q. Until when?

A. Until I discovered it on reading his tachograph on Monday morning, the 26th, that would be the morning gap for 15 minutes.

Q. You had this problem with some other employees as well about breaks or any kind of breaks?

A. I would call them unexplained stops, and when I discovered one I called it to the driver's attention, found out what it was, and then either remedied it with an admonition or, in the case of an afternoon route, gave him more kids to take home.

You know, if a driver clears a junior high school before picking up any elementary school run and he's got 10 or 15 minutes, I gave him some more kids to take home.

[184] Q. And there were times when you spoke to other employees about these unexplained breaks? What would they say?

A. They would either correct the situation, or if the unexplained breaks would come before their afternoon pick up, which means they are arriving at the school way too early and expecting to get paid for that, that we solved with, "Well, leave the garage 10 or 15 minutes later."

Gaps between, in the afternoon, between the junior high school drop offs and the elementary school pick ups, I remedied that situation by giving them more children.

The morning situation, gap in the morning, a driver was stopping for coffee on the way out. So I said, "Fine, I'm not going to pay you for stopping for coffee." It was a five minute stop there.

Q. Who was that?

A. Thomas Allery. He used to stop at Friendly's on the corner of Boston and Gay.

Q. Where was this?

A. This was in the morning.

Q. When was the discussion you had with him?

A. September of the previous year.

Q. You found out that he was stopping at Friendly's?

A. I asked him. I called him in and I said, "I've got a gap in your graph here. What is it?"

[185] And he says, "I'm going out and I'm stopping for coffee."

I said, "Well, I am not going to pay you for a coffee break."

He said, "Fine."

So I just paid him for his driving time.

Q. He is not supposed to stop for coffee?

A. He had no children on the bus at the time. He was not causing any undue lateness on any of his arrival times

at school. So I told him I just was not going to pay him for his stop.

The stop was at 6:30 in the morning. He would leave the garage.

[186] Q. What you are saying is some breaks are allowed and some are not?

A. No. Mr. Santillo was charging me for time that he was stopped because he did not have a tach on. These other were determined from reading the tachograph charts.

Q. I understand that. What I am trying to understand is—it's a little confusing to me. You have to understand, I am not in the industry. I am trying to understand, what is the rule?

If I am a new employee, do you say anything to a new employee when you hire him about what kind of a rule you have or what kind of policy there is with respect to taking a break? Do you say anything about it?

A. No, the runs are set up so they go in the morning—they work basically two hours in the morning and two hours in the afternoon, the bus drivers—or whatever [187] their afternoon run is, is continuous from when they leave the garage to when they get back. If someone is leaving the garage 10 minutes early to go sit in the street corner and get a cup of coffee, no.

Q. No what?

A. They are not being paid for it. They should not be paid for it.

If a driver is stopping in between his runs in the afternoon, or if a driver has a lag between his afternoon junior high school run and his afternoon elementary school run—junior high schools get out at 2, ten minutes of 2, quarter of 2; elementary schools get out one hour later.

so what happens is they pick up their junior high school run at quarter of 2, drop all those kids home, go for 10 minutes of three, or quarter of three or 2:30 or whatever their elementary school pick up is, pick up those kids and then take them all home, then return to the garage.

That is the afternoon. In the morning they pick up their junior high school kids, drop them for 9:10, go out and pick up the elementarys and drop them for 9:10.

Q. But let's say given the example that they drop off junior highs first?

[188] A. In the morning, yes, junior high school.

Q. In the afternoon they bring home the junior high first at, say, 2:30—whatever it is?

A. Quarter of two.

Q. So at quarter of two they take them back. Now he is supposed to go to pick up the elementary school—what is that?

A. That is anywhere between 2:30 and 10 minutes of 3.

Q. That is at the school?

A. At the schools.

Q. What are they supposed to do between quarter of two and two-thirty?

A. Drop off their kids.

Q. What if they drop them off by 2:15 or 2:20, and they don't have to pick up the next group until 20 to 3. What are they supposed to do then?

A. That is a rare example but when that is found we give them more kids to take home.

Q. Well, if they are out in the middle of the road you are not going to give them more kids?

A. No, when that situation is discovered more kids are added.

Q. Let's take that example that I have just given you, twenty after two, let's say. He has finished with his elementary school kids and doesn't have to pick up his [189] junior high school kids until 10 to 3, whatever.

Q. He goes to the junior high school and waits.

Q. He waits? He is not authorized to go to take a cup of coffee?

A. . He can go take a cup of coffee.

Q. He can?

A. Yes.

Q. In that situation he is allowed to do it?

A. That is a rare situation. It was discovered with one driver, John Walker, that he had time in the afternoon between his jur'or high school and his—

Q. Well, I would think, aren't there times when traffic situation and weather and the amount of kids that you have, there is going to be a variance in the time that one is going to have between stops?

A. Yes, but generally runs are set up on a very tight schedule. This is in the afternoon. That would be allowed. There would be nothing wrong with that.

But say the driver had to pick up at quarter of two their junior high school. They left the garage at quarter after

one, left the junior high school at 1:30 and sat there for 15 minutes. I wouldn't pay the driver for that 15 minutes and I would call him in, as in the case of Mildred Hanson, I said, "Look, leave 15 minutes later for your school." And that closed that gap and [190] solved that problem.

Do you want to try the morning again?

Q. I guess it wold be the same. Basically, what you are saying is that some breaks are allowed and some aren't, that is what it seems to come out to. Is that—

A. Yes. The basic involvement is the kids. In Mr. Santillo's case, he had an hour to pick up his junior high school kids, get them into junior high school for 8:10, then go right out and get his elementary schools in for 9:10, an hour later.

What Mr. Santillo was doing was leaving the garage early, dropping his kids at 10 minutes of 8, twenty minutes before they have to be in school. And then going on and taking his break in there and then going on and doing his elementary school pick ups, running in his schools at the elementary schools late.

Q. So he would be coming late—

A. He would be coming late into the elementary.

But the basic problem was in dropping his junior high school kids 20 minutes before they could have been in school.

Q. And you never really found out that this had occurred again until the 25th?

A. Monday morning.

Q. This was the first time that you heard that, "Well, he's [191] now he's doing this again"?

A. Yes.

Q. Prior to that your initial annoyance that you testified you were upset about was only in reference to the fact that he would be going home in the afternoon?

A. Right, that was the complaint which I checked out with the other drivers, yes.

Q. Again, so my question to you still is—my original question—you don't say anything to people at the time you hire them about what policy there is and whatever? That is just something that comes as it goes along, you tell them?

A. You know, it's not as if you are working in a factory and you get a 10 minutes coffee break. You've got kids to get to school. You are restricted by chapter 766 that says

you have one hour, and that's pretty much it. One run follows the other run.

Q. And now this business about the keys you also talked about is another basis for discharge, that he would be leaving the keys in the bus. And you said he was spoken to about that by yourself on a number of occasions?

A. By myself, I had spoken to him and even explained to him the reason.

Q. Which is what?

[192] A. Which is that it was getting warmer now. We are leaving the garage open. I don't want anybody to steal the bus, you know, I don't want anybody in the bus.

Q. This was in the garage now?

A. This was in the garage, but the garage is open at both ends. It's 12,000 square feet, and there were at that time no windows in the office.

Another reason was the message system of communicating to the bus drivers is when they come in for their afternoon run or their morning run they pick the keys and messages—additions, deletions, change in addresses and so forth.

Mr. Santillo not bothering to pick up his keys because they were already in the bus, he was missing his messages.

Q. When you spoke to him about this what did he say?

A. He said, "Okay", and he'd so it for a couple of days and then off again, you know, we would be chasing him down again.

Q. Now you talked also about this business about stopping at his house for 10—whatever amount of time. Now that is something that is completely unauthorized, right?

A. Essentially what he is doing is he is hopping in his bus and he is driving out of the garage at 2 o'clock, [193] and then he is coming back at 5:30 and saying, "I've worked all that time:"

And then we find he has been taking 20 minutes, half an hour stopping at his house on the way back to the garage.

Q. So this was on the way back to the garage?

A. This was on the way back to the garage in the evening, after he had cleared his last run.

Q. This was after he had cleared his—

A. After he had cleared his last run of all his kids. He was coming in consistently at 5:30 and putting in his time until 5:30, when in essence he could have been back at 5:10.

Q. Then he was supposed to punch out at 5:10 and you would only pay him up until 5:10?

A. Until 5:10, but he had on two occasions said, "When I am out, the bus is rolling."

Q. And you spoke to him about this—you said you did speak to him about this on a couple of occasions?

A. Yes, on two occasions. The first occasion was the first incident of coffee breaks in the morning. And the second instance was after I had had reported the—

Q. Did you ask him specifically whether he did what you said he did, i.e., stop at your house on the way back?

[194] A. I believe I did.

Q. He said—

A. He said no.

Q. Never did it?

A. That's correct.

Q. Was this before or after you had received these reports from these other employees that you mentioned?

A. This was the second warning, after I had talked to the—

Q. What do you mean, the second warning?

A. The second time I told him not to stop. And the second time he had told me—

Q. Wait a minute. Start over.

So you told him not to do it this time? I thought you testified earlier you didn't te-l him not to?

A. To specifically stop at his house—

Q. You did?

A. I asked him if he—

Q. You asked him if he was stopping?

A. He said no, when the bus is out—when I am in that bus, the bus is rolling.

Q. And was that the extent of the conversation?

A. That was the extent of the conversation.

Q. That is what I am saying—

A. If someone says he isn't, someone says he isn't.

Q. That is what I am trying to find out.

[195] But at that time you didn't tell him, "You know, you are not supposed to be stopping. You are supposed to come right back after your run."

A. That should have been understood on his part.

Q. But you are not sure that you said?it?

A. I don't know if I specifically spelled out, "Look, don't—"

Q. Your testimony is obviously by you asking he should have known that he shouldn't be doing it?

A. Yes, you know, he had only been working for me for three years or so.

Q. And then this last time you spoke to him was when about that—the last time prior to the discharge?

A. About stopping?

Q. Yes.

A. That was after I had received and confirmed the complaint about his stopping on the way home.

Q. You confirmed with those other employees that you mentioned?

A. With the other employees, yes.

Q. Now did you mention to him at that time that you had checked it out—that "I have evidence from other employees or other people that live on your block that specifically tell me that they have seen your bus?"

A. No, I did not. As a matter of fact, I don't believe [196] I checked with the other employees until after I had talked to Santillo about it. I got the anonymous call; I talked to Santillo about it and when he had repeated—

Q. Let's try to get the time frame.

Q. In chronological order?

Q. Yes.

So you spoke with Santillo about it about when, the last time?

A. I believe it was the end of February.

Q. And after that?

A. The first time I spoke to him was the previous year, okay, October, November, December, we weren't quite sure of the time—

Q. Yes, the coffee break. I mean stopping at his home.

A. The second time of him being told not to stop was after the anonymous phone call. Okay, and I got practically verbatum the same response that I had gotten the first time. That is when I checked.

Q. And after that you checked with the—

A. After that I had the—

Q. You checked with the employees there after—

A. After this conversation.

Q. But you didn't confront him again after that, or ask him about it after that?

[197] A. No.

Q. Even thought you had evidence from employees, now wanted to—

A. I wanted to install the tachograph and get evidence.

[198] JUDGE FISH: That is all I have.

Mr. Kennedy, do you have any questions on anything I have asked?

MR. KENNEDY: Yes.

Q.

(by Mr. Kennedy) How did you find out that Mr. Santillo was dropping junior high school kids off 20 minutes ahead of schedule?

A. By reading the tachograph.

Q. By reading the tachograph?

A. Yes.

Q. You didn't get it from the school department?

A. No.

Q. You didn't get any complaints from the school department?

A. No, I didn't.

Q. And again you weren't talking—

A. The kids he was driving I believe were retarded and they couldn't really come right out and complain.

Q. And that was just the morning right? He was only actually, as far as the tach was concerned, when you pulled the tach it was determined through the tach that he [199] was dropping these kids off early?

A. Yes.

Q. But that didn't apply in the afternoon?

A. No. In the afternoon when he was finished dropping these stops, when he had finished dropping off all his kids he stopped at home before returning to the garage.

[202] Q. (by Mr. Kennedy) Now you said that Mr. Santillo was leaving the barn at 7?

A. I don't believe I—

Q. What time—

A. I believe he left at 6:30. If I saw a tachograph I could show you.

Q. This is Respondent's 2, and I am giving you the day of the critical week of 19th.

[203] Okay, this is on Monday, the 19th. We've got him leaving the garage at 6:45, stopping at 7:45, okay, resuming at about five minutes of eight and going on again until 9:10.

Q. So it's a 10 minute break from 7:45 to 7:55?

A. It comes out to about 13 minutes.

Q. Okay, now—

Q. Yeah, about 10 minutes.

A. Ten minutes, all right.

[204] Q. (by Mr. Kennedy) In the installation of this graph into the machine, if the paper were to be turned slightly in either direction, a person who actually was leaving at 7 would appear to be leaving at 6:45 or 7:15?

A. That's correct. That is where we match it up with the time they left the garage.

Q. There's no punch out at the garage?

A. There's no punch out at the garage.

Q. All right. So that we have to believe, because it was admitted by Mr. Santillo on the stand that he took three 10-minute breaks, and the chart clearly shows the breaks? The dispute, however, is the gravity of the breaks.

And you introduced this graph to show the gravity, to wit, that the breaks are causing him to pick up the children earlier. My Santillo's testimony is that he was leaving at the proper time, seven o'clock, and that actually he didn't delay to drop off the children at school, and took the 10 minute break after that first drop off.

And any explanation I can offer in that regard is up to you. Is it possible and you said yes, if the chart is pushed one way or the oterh it will show a difference of from 10 to 20 minutes.

[205] A. Okay, if that is the case Mr. Santillo is leaving the garage at 7, as you say, and arriving back at 9:30. So that would indicated that it is installed off center. If it shows up earlier on one end, it will show up later on the other.

Q. That is what I mean, that's all I say.

Q. As a matter of fact, here we have Mr. Santillo not going over 22 miles an hour the whole way, and not going over 30 miles an hour on the way to Sunshine.

Q. Well, I don't know the speed perspective but I just say it's justified there if it's put in off center, and the tach looks like the man is actually playing games with pick up and delivery of children when, in fact, he was not.

That is what I am concerned about, is that meas-uring.

A. No, he was—okay—

MR. WELENSKY: There is no question before the witness.

MR. KENNEDY: It was asked and answered. he said that if it's off center—

JUDGE FISH: Whatever he said is on the record.

Q. Is that correct, Mr. Patterson?

A. Without the time to go by—Santillo did, in fact, leave the garage at seven every morning, it would show up on the graph at seven. Or, as it does here, 6:45.

[206] Q. But what is printed there could be off by the setting one way or the other?

A. Yes.

Q. I said, very simply, did the parents complain to you about having to deliver the child to the bus 10 minutes earlier?

A. No, they didn't.

Q. So your basis for taking action against Mr. Santillo [207] for theoretically dropping children off earlier than usual to get a coffee break, based on a graph which you said might very well be off center.

Two, even though you felt he was dropping them off earlier, there were no complaints from the parents about this? Is that correct?

A. That's correct.

[208] MR. KENNEDY: That is the 19th day of March, Monday, the 19th.

A. What is the question?

Q. Do you see a 10 minute break?

A. Yes.

[209] Q. And that 10 minute break would be between—

A. Between 2 and 2:10 yes.

Q. And that break was also, the graph shows, between two pickup and delivery sets?

A. Right.

Q. So my question to you that developed in my having had a recess on this issue, is that if he could do the 10 minutes in the afternoon why could he not conversely do it in the morning, without having to impose any form of early pick up on the children?

A. The early pick up—

Q. Assuming arguenndo, because I think—

MR. WELENSKY: Objection—

MR. KENNEDY: He is not answering my question.

Q. Assuming arguenndo that the graph was off and that it should have been callibrated for seven on the nose, and that that could be wrong?

A. Yes.

Q. If that could be wrong, why couldn't the 10 minutes that he honestly obtained—which I think you testified he obtained without manipulation in the afternoon—could be obtained equally without manipulation in the morning?

A. Again, the pick up time of the children is in question.

[210] Q. Don't measure the pick up time to the graph. I am assuming the graph is callibrated to seven o'clock.

A. Okay, that would have added 15 minutes onto the end of the day. He conceivably would have been dropping his elementary school late.

Q. Oh, I see what you mean. You are talking about the afternoon?

A. No, this is the morning, dropping the elementary school late.

Q. Dropping the elementary school late?

A. Yes.

Q. What time would it show the break?

MR. WELENSKY: Well, is the question hypothetical, or is—

MR. KENNEDY: He is measuring the hypothetical with the help of that instrument.

The hypothetical being that the chart itself is off in terms of his starting time, that that time should be seven.

A. Right.

Q. And waht does the graph show his starting time as?

A. A little after 6:45.

Q. All right, so that's about a 12 minute factor. If you were to add that 12 minute fctor into this, where the break begins, move that over 12 minutes, where would [211] that show he started his break?

A. (No response)

Q. Right now it shows he is starting his break when?

A. About quarter of 8.

Q. That would show his break about two minutes of eight, right?

A. Starting his break at two minutes of eight.

Q. How would that interfere with the children?

A. That would have them getting into school, driving one mile to the coffee shop to be there for two minutes of eight, which means he's still dropping off considerably before the time they are due in school.

Q. If he were dropping them off considerably later than he should wouldn't the school authorities be complaining about it?

A. No, sir. He is dropping them off and is at the coffee shop at two minutes of eight. They don't have to be in school until ten after.

Q. I see, so you are saying whereas before you thought he was doing 20 minutes ahead of time, now you closer to 12 minutes ahead of time?

A. Yes.

Q. And you still consider that equally aggregious, an equally serious offense, 12 minutes ahead of schedule, children who are in some cases retarded?

[212] A. On a consistent basis after he had been admonished not to do this, yes.

Q. I though he was admonished not to do it on a 20 minute basis?

A. He was admonished not to stop at all.

[213] EDWARD WEST

was called as a witness by and on behalf of Counsel for the General Counsel and, having been first duly sworn was examined and testified as follows:

[214] Q. And as earlier testified to by Mr. Santillo, Mr. Santillo is your brother-in-law?

A. Yes.

Q. Directing your attention to about 7 p.m. on the night of Friday, March 23, 1979, did you have a conversation at the terminal with George Patterson?

A. Well, every other Friday night I had what they called a resident run. I walked into the office and Mr. Patterson he asked me, he says, "What's with Sam and the union?"

I said, "I don't know nothing about it, other than Sam had a lot of people complaining to him. And him being him, he just wanted to help them. That's all I know about it."

So rather than stick around and take sides, I just went back out into the garage and walked around and waited for my run to come in.

Q. Did he say anything to you in response to that? You said you didn't know, you said people complained to him and knowing Sam, he would do something about it?

[215] A. Yes.

Q. What did he say in response to that?

A. Well about he was taking it personal and referred to at that time Sam had his truck parked there, and that he was letting him take time off in the summer for his own personal job, which is running the fair circuit.

Q. He was referring to these as favors he had done for Sam?

A. Yes.

Q. And what did he say about that?

A. Wait until he wanted them again. So I took it like that was the end of the favors, he's had to find another place to park his truck and when it come time to get another driver to do his run, he's going to be out of luck.

Q. Could you tell us what that meant, a back up driver—

A. Well, he didn't say back up driver, but you had to have a back up driver, okay, that is the company policy.

Q. To move this along, is it correct that Sam has a job where he works various fairs and runs a booth?

A. Yes.

Q. And he asks for time off at certain times, is that right?

A. Right.

[216] Q. And Patterson had been letting him have that time?

A. Right.

Q. And that is what he was referring to?

A. Right.

Q. Now did you relate this conversation to anyone after it happened?

A. Yes, after I did my run I went home and I told Sam about it.

Q. Did you have a practice of taking coffee breaks?

A. Yes.

Q. And did you do this on the clock, your work time?

A. Well I just ordinarily stopped if I was between runs, I just stopped.

Q. Have you seen other people take coffee breaks at the company?

[217] A. I seen vehicles at different coffee shops, restaurant,s what have you.

Q. These are clearly marked Transportation Management?

A. Yes.

CROSS-EXAMINATION

[218] Q. You stated that you have taken coffee breaks?

A. Yes.

Q. Were you ever told not to take coffee breaks?

A. No, I wasn't.

Q. Were you told not to stop and take breaks?

A. No, it was never mentioned to me.

Q. How often did you take these coffee breaks?

A. Whenever I had the opportunity. Whenever there was no kids on the bus or in between runs.

Q. And how often did you take them?

A. Everytime I went out.

Q. Every day?

A. Yeah, definitely every day. Sometimes once a day, sometimes twice.

Q. How long did you stop?

A. A few minutes.

Q. How many?

A. Five minutes, somewhere around there. Just enough to drink the coffee and get going.

[219] Q. Drink your coffee and leave?

A. Yeah. I didn't sit around. I just drank my coffee and left.

Q. And in the statement you gave to the National Labor Relations Board didn't you say that you would stop for two or three minutes?

A. I said two, three, four or five minutes.

Q. Okay, my question is, your statement you gave to the National Labor Relations Board—

A. Well, if it's there—

Q. Let me finish.

A. Okay, finish the question.

Q. In the statement that you gave to the National Labor Relations Board didn't you say that you stopped for two or three minutes?

A. If it's there and I signed it, yes, I did.

Q. That is your statement?

A. Yes.

[221] JUDGE FISH: I just have one question.

When you had the conversation with Mr. Patterson, you said something that he said to you something about he was taking it personal. I didn't quite understand.

What exactly did he say?

THE WITNESS: I don't know exactly what he meant

by—

JUDGE FISH: No, I am not asking you what he meant. I am just asking you what he said.

THE WITNESS: That's exactly what he said, "I'm taking it personal. When he wants a favor—you know, referring to parking his vehicle and time off to do his—"

JUDGE FISH: And what?

THE WITNESS: Time off from driving to do his own—he has a stand, he runs a fair stand in the summer— time off for that or to park his vehicle. The way it come across to me that the privileges—

JUDGE FISH: NO, I want to know what he said.

THE WITNESS: Okay, thats what he said.

JUDGE FISH: What?

THE WITNESS: You know, when he wants a favor, I'll remember it.

[222] JOSEPH F. BAER, Jr.

was called as a witness by and on behalf of Counsel for the General Counsel and, having been first duly sworn was examined and testified as follows:

THE WITNESS: Joseph F. Baer, Jr., 86 Elmer Drive, Chicopee.

DIRECT EXAMINATION

Q. (by Mr. Kennedy) Are you here under subpoena?

A. Yes, I am.

Q. Were you formerly employed at Transportation Management?

A. Yes, I was.

Q. During what period of time?

A. From October of '78 to April of '79.

Q. What was your job there?

A. I was a driver and did mechanical work in the garage.

Q. Do you work nights, Mr. Baer, as a musician?

A. Yes, I do.

Q. Directing your attention to Thursday, March 22, 1979 [223] at about 10 p.m. while you were working at a place in Holyoke called the Train Stop, did you have a conversation with George Patterson?

A. Yes, I did.

Q. Was a customer?

A. Yes.

Q. Had Mr. Patterson ever shown up at any of the other places such as the Train Stop where you worked before?

A. No, he hasn't

Q. MR. WELENSKY: I will object to that. He would not have known whether or not—

Q. Did you see him at any of the places that you worked before?

A. No, I have not.

Q. You never talked to him at any of the places where you performed as a musician?

A. No, I didn't.

Q. Tell me what he said to you on that Thursday night.

A. He asked me if I heard anything about the union and I told him no.

JUDGE FISH: Could you speak up a little?

THE WITNESS: He asked me if I heard anything about the union and I told him no.

Q. Now directing your attention to the next night, Friday, March 23, 1979, while you were performing at [224] another place called Lynn's Lounge in Chicopee, did Patterson appear there?

A. Yes, he did.

Q. What did he say on that occasion?

A. He came over to me and knelt down on the side where I was sitting and he told me that he heard Sam Santillo started the union, and called him two face, among other names, and told me that he was going to get even with him.

Q. Now directing your attention to the next day, Saturday, March 24, did you speak to Patterson at the terminal that day?

A. Yes. He let me into the garage that day and he asked me to do some work on one of the buses. I had to fix a bus window and put it back on the track. And he asked me if I signed a union card and I think I denied it.

He was telling me about the time that he had some dealings with the union and how they screwed him, something to that effect. And he went into his office—well, I went into the office and he was on the telephone. I came back out, and then he came back out later and I was still trying to fix the door.

He told me, he says, "I wasn't supposed to ask you any questions about the union."

[225] And I says, "Well, I could have told you that."

And he asked me, well, why didn't I? And then he told me not to mention anything about what we spoke of.

Q. In any of these conversations with Mr. Patterson did he get into discussing—well, in this conversation about Santillo in Chicopee, did he say anything about Santillo and a woman?

A. Yes, he did.

Q. What did he say?

A. He said that Sam called his girlfriend or something and tried to go with her or some sort—

Q. Called Patterson's girlfriend?

A. Yes.

Q. Was there anybody else present with you at the time?

A. Yes.

Q. Who was that?

A. My girl.

Q. And is your girl friendly at all with anybody involved here?

A. Yes.

Q. With Santillo's wife?

A. Yes.

CROSS-EXAMINATION

[226] Q. (by Mr. Kennedy) There has been testimony here about coffee breaks. What is the practice with regard to coffee breaks?

A. Everybody took coffee breaks.

Q. Did you take coffee breaks?

A. Yes, I did.

Q. How did you take them, what period of time?

A. In between my runs.

Q. Anybody ever tell you not to do it?

A. No.

Q. Did you hear of any rule about it?

A. No.

[230] Q. That Saturday that you referred to, were you there to fix a bus or were you there to work on your own car?

A. I was there to work on my own car and he asked me to fix a bus window.

[231] Q. Did you actually work on your own car that day?

A. Yes, I did.

Q. What was the purpose of you coming to work—was it to work on your car?

A. Yes.

Q. And indidentally he asked you to do something on the bus?

A. Yes.

[232] Q. That's fine, but my question is the frequency in which you, from your experience of keys being left on the bus, this would not be a regular practice, would it?

A. I found keys in the buses quite often.

Q. When you say quite often you are talking about two or three vehicles two or three times a week?

A. Right.

Q. Is that what you mean by quite often?

A. Yes.

Q. And that is what you mean by, it's a regular practice?

A. Yes. I have left the keys in the buses myself.

[234] Q. Relate this conversation about George Patterson's girlfriend. When did that take place?

A. It was at Lynn's Lounge.

Q. And when was that?

A. March 23.

Q. About what time of the evening was that? Was it in the evening?

A. Yes. It was about quarter after 10, 10:30, within that time period.

Q. And with regard to George Patterson's girlfriend, what was the conversation?

A. He said that Sam Santillo called his girlfriend and tried to take her out or go out with her or something of that sort. That is what he tried to get across.

Q. And did he mention that kind of matter of factly or did he seem to me maybe a bit upset about it?

A. He was upset because he said that he would get even with him.

Q. Was it your impression that George Patterson was bothered over Santillo asking out his girlfriend?

A. I don't know.

Q. Did you get the impression he didn't care whether [235] Santillo asked out his girlfriend or not?

A. I couldn't tell you.

Q. You couldn't tell me?

A. Whether he was bothered—

Q. How did he appear to you?

A. What I felt that my girlfriend was with me and—

JUDGE FISH: Excuse me, Mr. Welensky. I am really not interested in his impressions. Ask him about what he heard and what he saw.

MR. KENNEDY: Well, I wouldn't mind him asking that last question.

JUDGE FISH: You wouldn't mind but I'd rather not have testimony about his impressions. It doesn't help any.

MR. WELENSKY: I am interested in knowing how Patterson appeared to him, and let me ask it this one way.

Q. Did Patterson appear like he didn't care or did he appear that he was bothered by it?

A. I don't know if he was bothered by that or—

Q. No, I am just asking you specifically in regard to that?

A. He seemed upset but I didn't know, you know, whether it was over that or over the union bit. I couldn't tell you.

[236] LEE HOLMES

was called as a witness by and on behalf of Counsel for the General Counsel and, having been first duly sworn [237] was examined and testified as follows:

Q. Now directing your attention to January of '79, did you have a conversation with George Patterson about taking coffee breaks?

A. Yes.

Q. What was your system of taking coffee breaks?

A. I took a coffee break in the morning between my Goodwill run and my regular school run. During the conversation he asked me what the time lapse was on my tachograph, and I explained to him that I was taking a coffee break due to the time that I dropped off my Goodwill people and the pick up of the school run, the variation of time.

[238] Q. As a consequence of this conversation with him, did you change your system of taking coffee breaks?

A. No, because I explained to him they would make my school run too early.

Q. Did he have any objection at that point to it?

A. I explained to him the reason I was running my— he was complaining the main thing that I was getting my kids to school too late on my school run, that I should run my

school run earlier. But I explained to him that it wasn't because of the coffee break, because the law states that the kids are to be on the bus for one hour.

And I picked them up, the first stop at eight o'clock and I wasn't at school at that time until roughly quarter of ten, nine-thirty, quarter of ten. It was because I had too many kids, not because I was taking a coffee break.

Q. Did that resolve the matter?

A. That was the end of the conversation.

Q. And you went back to your old system?

A. Yes, whenever I had the break in there. I made sure that I picked up my first school run at eight o'clock. If I had a lapse in there then I took a coffee break.

Q. Did you have a tachograph in your vehicle?

A. Yes, for awhile.

Q. Was it turned in each week?

A. I had nothing to do with it. I turned in time cards every week.

Q. Were you paid for the time you were taking these coffee breaks?

A. As far as I know.

Q. Do you have a Chicopee run?

A. Yes, for awhile.

Q. What were you paid for the Chicopee run?

A. $3.88, I believe.

Q. Is that the same run that Mr. Santillo was doing?

A. Right.

Q. Did you know that Mr. Santillo was making $6.15 an hour for that?

A. No, not until today.

Q. Would you explain the procedure on half days?

A. I believe school got out at 11:20 or something like that, and Goodwill was at 4 o'clock. So I would have my school run done at roughly 1:30, 2:00, and I would sometimes go home or stop at a coffee shop somewhere and take a break until I had Goodwill at 4:00.

Q. You stopped at a coffee shop or you went home about when?

A. 2:30 maybe.

[240] Q. And you got to the place at 4 o'clock?

A. Yes, I made sure I was there at least at 4 o'clock.

Q. Were you on the clock for that hour and a half?

A. Yes.

CROSS-EXAMINATION

Q. Do you know for a fact that you were being paid for that hour and a half down time?

A. As far as I know. I turned in my time cards and the only difference in my time that I could account for was the difference in the time I was waiting at the Howard Street School, from the time he paid me and the time I turned in.

Q. Wasn't there a problem with your making your afternoon run and then making the Sunshine run?

A. Yes, that's why he took the—

[241] Q. He took it away from you, didn't he?

A. Yes. We discussed it.

Q. He talked to you about taking coffee breaks in the morning, didn't he, Mr. Patterson?

A. Yes, that is when I explained to him.

Q. Didn't he tell you that he wanted you to stop taking coffe breaks and get the kids to school earlier?

A. I told you, that is when I explained to him what it was, he asked me if I take my coffee break before or after my run. And I told him it wasn't because I was taking coffee breaks, it was due to the number of children that I had to pick up.

Q. Isn't it a fact that you stopped taking your coffee break at that time?

A. Not because he told me to.

Q. Not because he told you to?

A. No, it was because of the run. I still had—

Q. Because he added more people?

A. They rearranged the routes at that time.

Q. And that eliminated your coffee break during the run?

A. I didn't eliminate all coffee breaks. If you check the records, you'll find I took one.

Q. I am asking you specifically about that coffee break that you had been taking, the route was changed—

A. I didn't take them every day, no.

[242] But I did take them, yes, after that time.

Q. Please listen to the question and try and answer the question I am asking.

With regard to that specific coffee break that Mr. Patterson had talked to you about, was your run changed so that that coffee break was eliminated?

A. Not completely.

Q. You were taking a coffee break at a given time?

A. Right.

I am saying I had a coffee break between the Goodwill run and my regular school run. This is the coffee break that Mr. Patterson spoke to me about, that you are talking about. And I said the route was changed so I—not every day, I didn't take this coffee break every day—I said if it so ran that my Goodwill run a lot of times a lot of people didn't show up, so therefore I could make the run faster.

So therefore I would get to Goodwill earlier.

Q. You only took the coffee break on the days that you had time for it?

A. Right.

Q. And if you didn't have time for it, you didn't take it?

A. Right, that is what I am saying.

Q. But after Mr. Patterson spoke to you—

[243] A. I continued the same.

Q. The same way?

A. Right, becuase I explained to him it wasn't the fact that I was having the coffee break—because the reason that he was talking to me because of this break was because I was getting into the school too late on my school run. And I explained to him that it wasn't the coffee break—

Q. It was the Goodwill run that you had earlier?

A. No, it was the fact that the regular school run had too many kids on it to pick up, and a lot of times it made me get them there late. Because I couldn't take and pick up my Sunshine earlier because my first pick up there was at seven o'clock and I couldn't pick them up earlier because they didn't have their breakfast yet.

[244] Q. Did you initiate this conversation with Mr. Patterson about the coffee breaks?

A. No.

Q. Did he initiate it?

A. Yes.

Q. And he came to you—

A. And asked me about why I was taking a 10 minute break.

Q. Did he say how he knew about it?

A. Yes.

Q. How did he say he knew about it?

A. Tachometer. He noticed that I was having a 10 minute break every day, I believe at 10 minutes of 8, or in that area.

Q. He noticed that from your tachograph reading, right?

A. Right.

Q. And he came to you and talked to you about that?

A. Yes.

[245] Q. Now was there a situation where yourself and Russell vanHorn had been sitting at a school waiting for it to be let out and you were sitting there for a half hour or three-quarters of an hour per day, and Mr. Patterson spoke to you about that?

A. Well, I—

Q. I am just asking you if he spoke to you about the situation?

A. Yes.

Q. Okay. Did this discussion take place because you questioned him about why you were paid for less time than you thought you should be paid for?

A. Right.

Q. Didn't Mr. Patterson tell you that he wasn't going to pay you for sitting at a school for an unnecessary period of time?

A. Right.

Q. You worked in the terminal once a week?

A. I washed school buses.

Q. In November and December of '78?

A. Yes.

Q. and you noticed that Sam Santillo left his keys in his bus a lot, isn't that correct?

A. Right.

Q. And most of the drivers put their keys on the rack in [246] office, isn't tht correct?

A. Most of them did. As far as being directed to, I don't know.

Q. The question is did most of the drivers put their keys in the key rack in the office—

A. As far as I know, yes.

Q. Well, that is what you said in the statement to the NLRB, isn't it?

A. (No response.)

Q. Didn't you say that, "There is a key rack in the office used by most of the drivers."

A. I must have said it.

Q. You made that statement, didn't you?

A. I did.

Q. You were telling the truth when you made that statement, right?

A. I suppose so, if I said it. Like I said, that was a year ago, I don't know exactly what I said.

Q. Okay, well, do you want to change that statement?

A. No, I don't want to change it.

[247] REDIRECT EXAMINATION

Q. (by Mr. Kennedy) You testified that after this conversation with Mr. Patterson about coffee breaks you continued to take coffee breaks, is that correct?

A. Yes, when I had the opportunity.

Q. And did you have a tachometer in your vehicle?

A. Yes.

Q. Did Mr. Patterson from that date forward ever come back to you and rebuke you for coffee breaks after that?

A. No.

RECROSS-EXAMINATION

Q. (by Mr. Welensky) Do you know whether you were paid for those coffee breaks(

A. Like I said, I used to turn in time cards—

Q. No, I am just asking, do you know if you were paid for those coffee breaks?

A. I am trying to explain to you.

I said the only time I can tell the difference when [248] he—from what I used to get paid and what he went by. I know what time I turned in.

Q. The question is this, do you know, in fact, whether or not you were paid for those coffee breaks?

A. No, I can't say for sure, but I can say I know—

Q. Well, you—

JUDGE FISH: Let him answer it.

THE WITNESS: I used to turn in time cards every week. He has a copy of them—I don't know whether he still does or not but I do at home, and I know I still have my pay stubs—that the time that he paid me for and the time that I turned-in for, I could almost say was the time I sat down the Howard Street School waiting for the kids to get out of school.

Q. You could almost say?

A. Right.

[252] SHEILA KELLY

was called as a witness by and on behalf of the Respondent and, having been first duly sworn was examined and testified as follows:

JUDGE FISH: Have a seat and give your full name and address for the record, and please speak up.

THE WINTESS: Sheila Kelly, 58 Alcon Drive, Chicopee.

DIRECT EXAMINATION

Q. (by Mr. Welensky) Were you ever employed by Transportation Management Company?

A. Yes, sir.

Q. and when were you employed?

A. From January of this year to June of this year.

Q. And what was your job?

A. I was a van driver.

Q. Are you acquainted with Sam Santillo who also worked [253] for the company?

A. Yes.

Q. You live at 58 Alcon Drive?

A. Yes, sir.

Q. Does Mr. Santillo also live on Alcon Drive?

A. Yes.

Q. Did you ever have any conversations with anyone in management at the company concerning Mr. Santillo's stopping and taking breaks in the afternoon?

A. Yes, sir.

Q. With whom did you speak?

A. George Patterson.

Q. Would you relate what was said in the conversation?

A. I had a phone call from George and he asked me, he said, "Does Sam park his bus—

MR. KENNEDY: Objection. Could we fix the time?

Q. Approximately how long was this before Mr. Santillo was fired?

A. I would say at the least it had to be a week and a half.

Q. And what was this conversation?

A. He asked me if I saw Sam's bus parked out there every day, and I said, "Yes, I did."

He said, "Approximately how long is he there?"

I said, "Twenty minutes to a half an hour every day."

[254] He said, "All right, thank you. That is what I wanted to know."

Q. Was anything else said in that conversation?

A. No.

Q. As a matter of fact, had Mr. Santillo been parking the bus on Alcon Drive for 20 minutes to a half hour every day?

A. Yes.

Q. And this conversation took place on the telephone?

A. Yes.

Q. Did you ever have any conversations with Mr. Santillo that you considered threatening conversations?

A. Yes, sir.

Q. Would you relate when those conversations took place and what was said?

[256] JUDGE FISH: I have a lot of doubts on the relevancy but I will allow it.

Q. (by Mr. Welensky) Will you relate when the conversation took place and what was said?

A. I had gone to a union meeting that they had for TMC employees, and this was the day after he called me on the phone. And he said—

[259] A. He called me up the day after the union meeting and said, "I would not go to another union meeting if I were you. You are dealing with bigger people than what you dealt with before. These men are not going to put up with what you are doing," he says.

I said to him, "Is this a threat? Because if it is, I am going to go to the district attorney's office. I don't have to take this, living across the street from you."

And he said, "You take it for what it's worth."

I said, "Well, please don't call my house anymore."

Q. Has he called your house again?

A. Not since that time.

Q. Did he state what it was that you better not do anymore?

A. He accused me of going to management with what had happened at the union meeting.

[260] CROSS-EXAMINATION

Q. (by Mr. Kennedy) Had you, in fact, gone to management about what had happened?

A. I certainly did not.

Q. Hadn't you talked to Mr. Patterson about the meeting?

A. I certainly did not.

Q. Did you indicate what Miss Strobell spoke at the meeting?

A. I certainly did not.

Q. Did you recall Miss Strobell speaking at the meeting?

A. Yes, I remember that she did, yes.

Q. How were you contacted about the meeting?

A. They had union representatives standing outside the office when I was driving handing out pamphlets one morning.

Q. Did you sign a card?

A. No, I did not.

Q. How many meetings did you go to thereafter?

A. Just that one.

Q. Did you have a altercation with your boyfriend that day?

A. I certainly did.

Q. Did he physically abuse you?

A. He certainly did.

Q. And were you quite upset that day because of it?

[261] MR. WELENSKY: I am going to object.

MR. KENNEDY: Now her credibility is an issue at this point. Is she telling the truth? Is she speaking from the point of view of witness with a clear mind as to what occurred that day?

JUDGE FISH: I will allow it.

MR. WELENSKY: If you want to talk about getting far afield—

MR. KENNEDY: You opened the door, Mr. Welensky?

JUDGE FISH: Go ahead, I'll allow it.

Q. (by Mr. Kennedy) You had some difficulty with your boyfriend?

A. Not the day Sam called me, no.

Q. The day before?

A. No.

Q. When was this, approximately?

A. I'd say about a week.

Q. What happened to him?

A. He got a phone call in the morning, an anonymous phone call telling him I was dating a mechanic in the ga-

rage, which he got very upset about and he beat me up for four hours while Sam's wife watched.

Q. Did you have hospitalization for this?

A. Yes, I did.

Q. Were you emotionally upset about this, I assume, [262] pretty disturbed?

A. About the beating?

Q. Yes, about the beating.

A. I was upset about it, yes.

Q. And that upset continued for some time?

A. There were other things that were done to me, and they did upset me for quite a long time. It happened right around the time all this came out.

Q. And you were nervous about things for awhile, wouldn't you say?

A. This is hard to me to answer because I'm a nervous person anyway.

[263] Q. You observed Mr. Santillo's car in front of your bus, and how did this information get to Mr. Patterson? Did you call Mr. Patterson?

A. Mr. Patterson called me and asked me a direct question.

Q. And that was about a week and a half before Mr. Santillo's discharge?

A. At the very least a week and a half.

JUDGE FISH: Could it have been more?

THE WITNESS: It could have been. I'm not quite sure. It might have been two weeks.

JUDGE FISH: Was it in March, though?

THE WITNESS: Yes.

Q. So he called you and asked you about Mr. Santillo?

A. Yes.

Q. In any of your conversations with Mr. Patterson did the subject of unions come up?

A. No, it didn't.

[264] Q. You didn't offer any ideas about uniosn to you?

A. No.

Q. But you were able to determine that every day of the week for 20 minutes to a half an hour each day—and you are sure a half an hour?

A. Yes, I am.

Q. How would you determine this?

A. My son watchs television. Sam would pull in about 10 minutes—before Sesame Street got done and he'd leave about 5 to 10 minutes before Mr. Rogers got done.

Q. What I am talking about is, how you had time with a small child to continuously observe the comings and goings of Mr. Santillo. How did you do that?

A. I went out the door for my paper and it would be there, the bus would be there. Or I would be coming in from shopping and the bus would be there. It was always there.

Q. So you observed it every so often during the course of the day?

A. Before I started working—

Q. But did you observe its arrival and departure is what I am getting at?

A. At least three times a week.

Q. You actually saw it coming and saw it going?

A. Yes.

[265] Q. Even though you were taking care of a three year old child?

A. Yes. I have a lot of windows.

Q. How did you have occasion to see it coming and going? Did you go to the window and look?

A. I might have been sitting on the stairs with my son.

Q. So you would see the actual arrival of the vehicle?

A. Yes.

Q. And you would see it departing?

A. Yes.

Q. What were you doing, were you doing this for Mr. Patterson?

A. No, I certainly was not.

Q. Were you actually recording his coming and going for Mr. Patterson?

A. No, I was not.

Q. Did you make a call earlier that year to Mr. Patterson on this matter?

A. No, I did not.

[266] Q. Was Mr. Santillo home?

A. Yes, he was?

Q. Was his wife home?

A. No, she wasn't. She was next door at her neighbor's house watching everything.

Q. She was watching everything?

A. That is what I heard.

Q. And she didn't come to your assistance?
A. No, she certainly did not.
Q. Did that upset you at the time?
A. I didn't know at the time that she had watched.
Q. When you found out, were you pretty upset?
A. Two or three weeks later I was a little upset, yes.
Q. So you were pretty angry with Mr. Santillos wife?
A. Not angry.
Q. You ween't angry that she wouldn't come to your help?

[267] RONALD SULLOWAY

was called as a witness by and on behalf of the Respondent and, having been first duly sworn was examined and testified as follows:

Q. (by Mr. Welesky) Mr. Sulloway, are you employed by Transportation Management Company?
A. Yes, I am.
Q. And how long have been employed there?
A. Almost two years now.
Q. And what is your position with the company?
A. Supervisor.
[268] Q. Are you acquainted with a former employee named Sam Santillo?
A. Yes, I am.
Q. And have you ever had any conversations with Mr. Santillo concerning leaving keys in his bus?
A. Yes, I have, twice.
Q. And would you relate when these conversations took place and what was paid?
A. The first time was about three weeks before he got fired and the last time was the day he got fired.
Q. And the situation three weeks before he got fired, did the conversation take place at the garage?
A. Yes, it did.
Q. And what was said?
A. I told him that we did not leave the keys in the buses, and that they are to be hung up by my desk.
Q. Is there a rack for the keys near the desk?
A. At the time there was not a rack. They would be brought in to me.
Q. Did Mr. Santillo respond?

A. Yes, he did. He said that he did not have to listen to him, the bosses' ass wiper and he didn't have a listen to me.

Q. Anything else said in that conversation? This is the one three weeks before.

[269] A. No, there was nothing else said. I let it go at that.

Q. You said you had another conversation with Mr. Santillo about the keys the week before he was fired?

A. Right. No—that was the day he was fired that came up.

Q. The day he was fired?

A. The day he was fired.

Q. Did you have a conversation with him the week before he was fired?

A. Not the week before, no.

Q. The day he was fired did you have a conversation?

A. Yes.

Q. What was that conversation?

A. It was about the keys.

Q. Was that at the garage also?

A. Right.

Q. And what was said?

A. He said he did not have to listen to me.

JUDGE FISH: What did you say first?

THE WITNESS: I told him, I said, "Sam, I've already warned you once about the keys," and I said, "This time I'll have to take and write you up."

And he said that he did not have to listen to me, and that is when I went to Mr. Patterson and I told him.

[270] Q. Did Mr. Santillo say anything else to you at that time?

A. No, he just said he didn't have to listen to me.

Q. The time that Mr. Santillo was fired, do you know whether or not he was for or against the union?

A. I don't know nothing about the union.

CROSS-EXAMINATION

MR. KENNEDY: Can we enter a stipulation that Mr. Sulloway is a supervisor?

MR. WELENSKY: Yes.

JUDGE FISH: The stipulation is received.

Q. You said three weeks before Mr. Santillo was discharged you spoke with him about keys not being turned over to you?

A. We told him they were not supposed to be left in the bus because I can't keep an eye on all the vehicles at the same time, you know, from being inside there.

[271] Q. Are you sure there was no board at that time to hang them up on?

A. The board wasn't up there then. We had hooks up there but no boards.

Q. What would you do with the keys?

A. The keys were on the hooks.

Q. Have you had occasion to speak to anyone else about leaving their keys in their vehicle?

A. Yes, I spoke to a few other guys about it.

Q. Do any particular individuals come to mind?

A. I spoke to Mr. Johnny Walker. I spoke to Mr. Thomas Allery and two or three others. And I have had no problems with them since.

Q. You spoke to each one of them once?

A. Just one time, sir. I told them the keys are supposed to be left in here. There is no way that we can watch the buses and do our work at the same time.

Q. The day he was fired you spoke to Mr. Santillo about the keys in the bus?

A. Yes, sir.

Q. What day did he leave the keys in the bus—or did he leave the keys in the bus that day or were you just reminding him not to do it?

A. No, sir, the keys were not on the board where they were supposed to be, and I found them in his bus.

[272] Q. In his bus?

A. Yes, sir.

Q. What time was this?

A. I'd say it was about 10:30, 11:00, somewhere in there.

Q. And you spoke to him at the garage at that time?

A. When he came back in for his afternoon run.

Q. Did you observe leafletting by the Teamsters Union that day?

A. No, there wasn't.

Q. The day that you spoke to him was the day he was fired, and you said around 10:30, and you observed no Teamster leafletting when you came to work that day?

A. I don't recall really, sir.

Q. Did you go to a Union meeting that night?

A. I didn't go to no meetings.

Q. Which way do you come to work, through the main gate?

A. Through the front door. I unlock the door in the morning.

Q. And you are absolutely certain that the day you are talking about is the very day that Mr. Santillo was fired?

A. That is when I talked to him about the keys the last time.

Q. Do you know when he was fired that day?

[273] A. When he came in for his afternoon run.

Q. If I told you that Mr. Santillo didn't come to work for his afternoon run that day—

A. Mr. Patterson was the one who fired him. I don't know if he called him up or if he came or when he came in.

Q. You don't know whether he came in for his afternoon run or not?

A. He came in there. He called and talked to Mr. Patterson, so that's when I figured is when he got fired.

JUDGE FISH: When you had the first conversation you had with Mr. Santillo, was it about three weeks before his discharge?

THE WITNESS: Yes.

JUDGE FISH: You said you let it go. What do you mean, you let it go?

THE WITNESS: With a warning not to leave them on the bus anymore.

JUDGE FISH: Did you tell Mr. Patterson about the incident?

THE WITNESS: Yes, I did.

JUDGE FISH: What did you tell him?

THE WITNESS: I told him, I said, "I told Mr. Santillo not to leave the keys in the bus anymore." And he says, "Okay, you told him. We'll let it go. If it [274] happens again we'll write him up." And that is what I was going to do. We have papers that we write up on them and we put them in their folders.

JUDGE FISH: You have papers that you write up?

THE WITNESS: Yes, sir.

JUDGE FISH: When do you do that?

THE WITNESS: When I tell them, and they have to sign them.

JUDGE FISH: I mean in what situations do you write up?

THE WITNESS: Well, we have these spare buses and if they fail to gas them and stuff like that when they get done using them, we write it up and put it in there, stuff that they refused to do.

JUDGE FISH: Like a written warning?

THE WITNESS: Right, written warnings. After three of them it's cause for dismissal.

JUDGE FISH: And Mr. Santillo never received any of those written warnings, did he?

THE WITNESS: No, he didn't.

[279] MR. WELENSKY: Just a very brief oral argument.

There is no question Mr. Patterson knew that Mr. Santillo favored the union prior to Mr. Santillo's discharge. There is no question that Mr. Patterson knew of many employees' sympathy about the union for or against prior to and at approximately the same time of [280] Mr. Santillo's discharge.

The fact of the matter remains that Mr. Santillo was taking coffee breaks in the morning, whether he believes he was entitled to them or not is not the issue. The fact of the matter is that he was taking them and he was warned about them well in advance of his union activities.

Secondly, Mr. Santillo admittedly was stopping at his home for 10 to 15, possibly 20 minutes by his own admission. There has been testimony that it has been up to a half hour. This was done virtually every afternoon. This was on his way back to the garage after making his last run of the day.

He could have driven directly to the garage, 10 minute drive, used the rest room facilities at the garage. Instead he chose to stop at his home on the way back after his last run.

Word of this was received by the Company prior to any union activities by Mr. Santillo, which admittedly didn't start until the week of March 19. The new tachograph was put into his bus the week prior to any union activities by Mr. Santillo.

It was completely unrelated to any union activities by the timing alone. The first full week when they had tachograph readings it showed that, in fact, Mr. Santillo was making

these stops, was taking the stop for the coffee [281] break in the morning. More importantly, his taking that break every afternoon. And these tachs and graphs are read and they reveal the break in the morning, the break in the afternoon.

Mr. Santillo was fired. Mr. Santillo had been paid for six and a half hours per day since December of 78. That is an extra half hour per day over what his actual time according to the tach was.

He knew that Mr. Patterson was very concerned about time. They had had a discussion the year before about Mr. Santillo's stopping for breaks. Mr. Patterson was concerned about that.

From other witnesses Mr. Patterson was concerned about other witnesses stopping and taking coffee breaks. He talked to Mr. Holmes about it. He talked to other employees about it. It was something that he was concerned about, employees stopping and taking breaks when the time could be better used as working time.

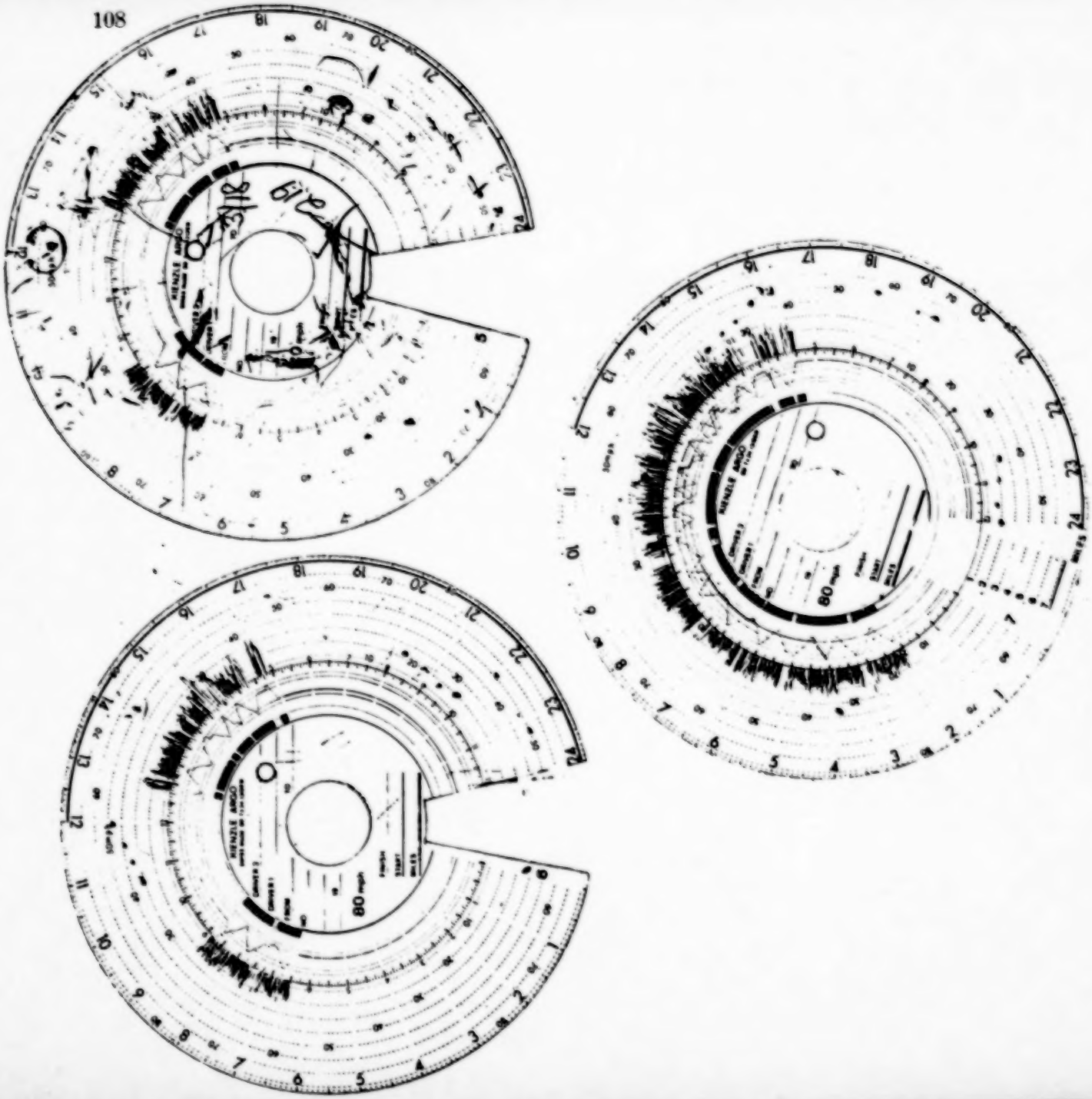
Mr. Santillo denied taking the breaks. He was getting paid for an extra two and a half hours a week week and in week out for at least the last few weeks, that's $15 a week paid for non-working time, and this is the reason Mr. Santillo was fired.

WE 3-25-79 TMC

	Mon	Tue	Wed	Thurs	Fri	
McClurens	5	4.83	7	5	5	2683 ✓ 1.25 ✓ Charter
Dudley	4	4	4	4	4	2009 ✓
Allercy	5.33	5.66	5	5.66	5.66	2731 ✓
Feathimcoat	4.83	5.33	6.5	5.33	5.33	2732 ✓ .25 ✓ No Charter
Walker	5	5.07	4.83	5	5	2490 ✓
Smith	2	X			X	2 ✓
Holms	4.66	4.83	5	4.83	5.66	2490 ✓
Scaffide	6.17	6	6	6.25	5.33	2.66 Term.
Johnson	3.75	4	4	4	3.75	1950 ✓
Hansen	4	4	4	4.33	4	2033 ✓
Dwight	2.33	4	4	4.25	4.5	1908 ✓
Stenard	4	4.5	4.5	4.25	4.33	2158 ✓
Keeley	4.33	5	5.25	4.66	4.83	2407 ✓
Hogan	6.25	6	6.17	6	6.25	3067 ✓
Cook	3.5	3.75	5	3.75	4	2000 ✓
Pahlow	Time Card					
Stodell	Time Card					
Hess	Time Card					
VanHorn	Time Card					
Joseph Baer	Time Card					

NATIONAL LABOR RELATIONS BOARD
Docket No. 1-CA OFFICIAL EXHIBIT NO. R-1
Disposition: Identified ✓ Received ✓ Rejected
In the matter of
Date 10/4 Witness Reporter
No. Pages

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UNITED STATES OF AMERICA

BEFORE THE
NATIONAL LABOR RELATIONS BOARD

FIRST REGION

In the Matter of

TRANSPORTATION MANAGEMENT CORPORATION

AND

GENERAL TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, BUILDING MATERIALS, HEAVY AND HIGHWAY CONSTRUCTION EMPLOYEES LOCAL UNION 404, a/w THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA

CASE NO. 1-CA-15,846

RESPONDENT's EXCEPTIONS TO THE DECISION OF THE ADMINISTRATIVE LAW JUDGE

Respondent takes exception to the rulings, findings, conclusions and recommendations contained in the Administrative Law Judge's Decision, as follows:

1. The finding under Findings of Fact, Section III.A., recited on page 2 that Santillo began his employment at $2.30 per hour in 1976 and received raises to $6.15 per hour in 1979.

The grounds for the exception are that the finding as stated indicates that these raises were merit increases. The finding omits stating that Santillo's testimony and a stipulation between the parties reveals the raises were not merit increases but, rather, were given across the board to all employees regardless of the employee's length of employment or performance (Tr. 5, 32).

2. The finding under Findings of Fact, Section III.A., recited on page 2 that Santillo and another employee went to the offices of the Union on March 19, 1979.

The grounds for the exception are that the finding indicates that Santillo was the first to initiate union activity at Respondent's establishment. The finding omits stating that according to the testimony of both Santillo and Patterson,

an employee named David Wands initiated union organizational activity at Respondent's establishment prior to any union activity by Santillo (Tr. 33, 152, 153). Wands is still employed by Respondent (Tr. 153).

3. The finding under Findings of Fact, Section III.A., recited on page 3 that Paterson approached employee Baer on March 22, 1979 at the Train Stop where Baer was employed evenings as a musician, that Paterson initiated a conversation regarding the union, and that Paterson had never previously appeared at any place where Baer worked in the evening.

The grounds for the exception are that the finding indicates that Paterson went there specifically for the purpose of discussing the union with Baer. The finding fails to include Baer's testimony that Paterson told him he was meeting some other people there that evening (Tr. 230).

4. The finding under Findings of Fact, Section III.A., recited on page 3 that on March 23, 1979, Paterson spoke with Baer at Lynn's Lounge and that Paterson stated that he heard Santillo started the Union, called Santillo two-faced, said he would get even with Santillo, complained about Santillo trying to date his girlfriend and again stated he would get even with Santillo.

The grounds for the exception are that the finding fails to mention that only under cross-examination does Baer first reveal that Paterson spoke of "getting even" with Santillo because of Santillo trying to date his (Paterson's) girlfriend and that Paterson was upset over this (Tr. 234); Baer's direct testimony only connected "getting even" with Santillo's union activities (Tr. 224). There is nothing in the transcript to warrant a finding that Paterson made the statement regarding "getting even" more than one time. Baer himself was not sure if Paterson's reference to "getting even" applied to Santillo trying to date Paterson's girlfriend or to Santillo's union activities (Tr. 235).

5. The finding under Findings of Fact, Section III.A., recited on page 5 that discredits Paterson's testimony that he learned of employee union activities mostly through unsolicited statements of employees.

The grounds for the exception are that Paterson's testimony is completely credible and supported by the evidence in light of his admitted inquiry concerning union activities to certain employees, his admitted recollection of one specific such inquiry to employee Stebbins, and his frequent

and everyday conversations with employees generally (Tr. 84, 85, 86, 166, 167, 168).

6. The finding under Findings of Fact, Section III.A., recited on page 5 that discredits Paterson's testimony concerning Santillo's role in union organizational activities.

The grounds for the exception are that the finding ignores and does not resolve Paterson's testimony that he believed David Wands was the union ringleader (who Santillo acknowledges began the union activity) (Tr. 33, 152, 153) and that the evidence fails to show that Paterson ever had reason to believe that Santillo, rather than Wands, was the union ringleader. The Decision's statement that Paterson's testimony in this regard is "highly dubious and unworthy of credence" is a broad, conclusory and unsupported statement.

7. The findings under Findings of Fact, Section III.A., recited on pages 6 and 7 that indicates Paterson testified that 22 employees approached him and, unsolicited, told about the union activities of others.

The grounds for the exception are that the finding totally mischaracterizes Paterson's testimony which was not that 22 employees had approached him and provided such information but, rather, that he was able to recollect the names of approximately 22 employees in favor of the union through conversations he had with employees some 7 or 8 months earlier and that he was not able to recall which employees had told him which specific names (Tr. 152-157).

8. The finding under Findings of Fact, Section III.A., recited on page 6 that Paterson conducted an extensive campaign of interrogating a number of employees during the week prior to Santillo's discharge on March 26, 1979.

The grounds for the exception are that the finding regarding the 22 employees is clearly erroneous. Additionally, Paterson's statements that he only asked a few employees about union activities and the testimony of the employees with whom Paterson discussed the Union do not support a finding of an extensive campaign of interrogation. The finding makes a quantum leap from a few instances to a sweeping generalization and, without good reason, dismisses the totally credible notion that the information mostly [-5-] came to Paterson through his frequent, casual conversations with employees.

9. The finding under Findings of Fact, Section III.A., recited on page 6 that although it can be surmised that

Paterson observed or was made aware of Santillo's contact with union officials while they were leafletting, that it is conceivable that Patterson did not happen to look out at that time and that the record is therefore insufficient to establish awareness of this activity on Santillo's part.

The grounds for the exception are that this matter should have been dismissed with a definitive statement as to the total lack of evidence to support any such supposition and that the only evidence, and credible evidence, was that paterson did not know of or observe such activity on Santillo's part. The finding fails to mention that Paterson denied seeing or knowing of Santillo's activity in this regard, the place where the leafletting occurred is not observable from either Paterson's office or from the garage, that Paterson went outside the garage and looked briefly only after being given a leaflet by Van Horn and then only observed the presence of the two union officials without any leafletting taking place at the time (Tr. 158-160).

10. The finding under Findings of Fact, Section III.A., recited on page 6 that Santillo was called into Paterson's office later on in the day (March 26, 1979).

The grounds for the exception are that the finding fails to state that Santillo was called in at that time because Paterson had read the tacograph discs with the meter that morning and [-6-] thereby established conclusively that Santillo had been receiving pay for time not worked and established the exact amount of time involved (Tr. 174-176). Omitting this information suggests that there was no particular reason for Santillo being called in at that time.

11. The finding under Findings of Fact, Section III.A., recited on pages 6 and 7 that Santillo requested the reasons for his discharge in writing and that Paterson, after discussing the matter with Zimmerman, refused to give the reasons in writing.

The grounds for the exception are that the finding indicates that Respondent refused a seemingly reasonable request by Santillo. The finding omits stating that Respondent has never provided employees with a written statement of reasons for termination and that Respondent's refusal was therefore in keeping with its usual practice rather than being an exception thereto (Tr. 96, 150, 180).

12. The finding under Findings of Fact, Section III.A., recited on page 7, footnote 7, that Paterson brought up the subject of the Union at the time of Santillo's discharge by

stating that the discharge had nothing to do with the Union and that Santillo did not bring up the subject of the Union.

The grounds for the exception are that the finding credits Santillo's account over Paterson's based on unspecified "demeanor considerations" and on Van Horn's comment when Santillo was leaving that the Union would make a "mountain" out of Santillo. Van Horn's comment is equally consistent with Santillo raising the subject of the Union as with Paterson raising the subject and is therefore not a valid basis for a credibility resolution. The finding over-[-7-] looks facts that are consistent with, if not persuasive of, Santillo raising the subject which are: Santillo admittedly contacted the Union before going to see Paterson when Paterson called him to come in because Santillo though he might be fired; Santillo believing that he was fired for union activities, and; Santillo testifying it was possible that it was he that brought up the subject of the Union (Tr. 43).

13. The finding under Findings of Fact, Section III.A., recited on page 7 that Santillo's stealing time relates to taking a coffee break in the morning and stopping at his house before reporting back to the garage.

The grounds for the exception are that the finding fails to state that Santillo also took a coffee break every afternoon which Santillo admitted (Tr. 22, 23, 24).

14. The finding under Findings of Fact, Section III.A., recited on page 7 that Santillo stopped at his house before reporting to the garage and punching out.

The grounds for the exception are that the finding indicates the drivers are on a time clock. The finding fails to state that there is no time clock and drivers are paid strictly according to the time worked as shown on their tachograph discs (Tr. 132, 133) except for Santillo who was paid according to the time he claimed he was working (and except for those employees working less than the minimum guaranteed 2 hours per run) (tr. 136-138).

15. The finding under Findings of Fact, Section III.A., recited on page 7 that Paterson considered Santillo stealing time because Santillo was "on the clock" and being paid for the time [-8-] he was taking coffee breaks and stopping at his house.

The grounds for the exception are that the finding as stated lessens and downplays the enormity of Santillo's offense by failing to set forth that Santillo was being paid for an extra 1/2 hour per day or 2 1/2 hours per week at the

rate of $6.15 per hour for time not actually worked and that this practice continued over a period of at least several months (Tr. 136-138, 147, 148).

16. The finding under Findings of Fact, Section III.A., recited on page 7 that there is much dispute with respect to Company policy and warnings concerning the areas of coffee breaks and stopping at home.

The grounds for the exception are that the finding suggests uncertainty with regard to employees stopping at home when the only evidence is that the Respondent does not approve or allow such practice and the finding suggests coffee breaks are being taken unknown to the Respondent are permissible when the evidence reveals that Respondent has rearranged routes, added children to routes, docked pay or take some other action when unpermitted coffee breaks are revealed (Tr. 183-188, 200).

17. The finding under Findings of Fact, Section III.A., recited on page 8 that employees Danko, West and Baer were unaware of any company rule prohibiting coffee breaks, that they had taken coffee breaks as a matter of course, had seen other employees taking coffee breaks and had never been spoken to or warned about it by Respondent.

The grounds for the exception are that the finding fails to state certain essential facts which make this an unwarranted finding [-9-] and reveal that the situations of these three employees are not comparable to Santillo's situation. Danko's hours fall within the minimum guaranteed two hours and therefore any break time would not be additionally compensated (Tr. 71). West drove a bus at one time but none of the buses had tacographs at that time, he later drove a station wagon which are not equipped with tacographs, and, in any event, did not stop for coffee for more than two or three minutes (Tr. 216, 219). Baer performed mechanical work and drove a wheelchair van which are also not equipped with tacographs (Tr. 139). The testimony of these employees concerning seeing other persons taking coffee breaks has no relevance without evidence of the type of vehicle, the nature of the work or run performed by those drivers and whether the working time of those drivers fell within the minimum guaranteed hours.

18. The finding under Findings of Fact, Section III.A., recited on page 8 that Respondent's driver information

booklet makes no reference to any company rules regarding coffee breaks.

The grounds for the exception are that the finding indicates that the booklet is applicable to bus drivers when, in fact, the booklet was prepared for station wagon drivers (Tr. 126); there is no evidence that the terms and conditions of employment of bus drivers and station wagon drivers are the same or even similar.

19. The finding under Findings of Facts, Section III.A., recited on page 8 that employee Holmes had a problem on his route was due to the number of children on the route and not due to his stopping for coffee breaks; that Paterson spoke to him about this, the route was rearranged and Holmes was able to continue [-10-] taking coffee breaks and was paid for the time.

The grounds for the exception are that the finding is misleading by failing to state that Holmes' route was changed to eliminate his coffee break time, that Respondent had no knowledge of his continued coffee breaks, and that Holmes admitted he really does not know whether he was paid for this coffee break time (Tr. 239, 241, 242, 248). The finding also fails to take note of the fact that Respondent's concern with employees stopping to take coffee breaks was not limited to Santillo but was directed to Holmes back in January, 1979 (Tr. 237).

20. The finding under Findings of Fact, Section III.A., recited on page 8 that Paterson's testimony concerning coffee breaks was confusing and contradictory.

The grounds for the exception are that the finding is inaccurate and misleading by failing to recognize that Paterson testified there is no hard and fast policy regarding coffee breaks but is dependent upon each individual situation (Tr. 183-188); the finding would cast the lack of a uniform and rigid rule to every situation as confusing and contradictory.

21. Exception is taken to the findings under Findings of Fact, Section III.A., concerning Santillo's coffee breaks by the failure to make findings as to the following:

a. Santillo's affidavit to the NLRB that he never took coffee breaks other than the one time the Springfield School Department became involved (Tr. 40, 41).

b. Santillo admittedly denying to Paterson he was taking coffee breaks when, in fact, he was doing so and thereby lied to Paterson (Tr. 42).

c. Santillo's affidavit to the NLRB that when Paterson spoke to him about stopping for coffee breaks, Paterson told him that he had warned him before about taking coffee breaks (Tr. 42).

d. Santillo's bus did not have an operating tacograph during the 1978/1979 school year until two weeks before Santillo's discharge, therefore Respondent would not have knowledge of Santillo taking coffee breaks during this time and thereby be able to take corrective or disciplinary action (Tr. 131, 200).

e. Santillo's continued taking of coffee breaks was only learned because Respondent installed a new tacograph to determine whether Santillo was stopping at his house every afternoon (Tr. 132, 200).

22. The finding under Findings of Fact, Section III.A., recited on page 9 that Paterson asked Santillo if he was stopping at his house before returning to the garage; this finding follows a finding that Paterson confirmed Santillo's practice in this regard with employees Kelly and Sotorpoulis.

The grounds for the exception are that the finding as stated indicates that Paterson questioned Santillo about

this practice only one time which was after confirmation by the two employees. The finding omits stating that this was the second time Paterson questioned Santillo about stopping at home, the first occasion being after Paterson received the anonymous telephone call and before confirmation with Kelly and Sotoropoulis (Tr. 82, 83).

[-12-] 23. Exception is taken to the findings under Findings of Fact, Section III.A., recited on page 9 concerning Santillo stopping at his home before returning to the garage, in the following respects:

a. Failure to make a finding that Santillo admitted he lied to Paterson concerning this practice (Tr. 82, 83, 130).

b. Failure to make a finding that Santillo stopping at his home and his denial of this practice was the reason Respondent installed a new tacograph in Santillo's bus (Tr. 83, 132).

c. Failure to make a finding that when Respondent read the tacograph disc from Santillo's bus it was revealed that not only was Santillo stopping at home but that he was also taking coffee breaks in both the mornings and afternoons (Tr. 90, 200).

d. Failure to make a finding that it was only a 15 or 20 minute drive from Santillo's home to the garage and that there are restroom facilities at the garage (Tr. 45).

e. Failure to make a finding relating gassing up time to the minimum guaranteed hours per day (Tr. 71) and thus Santillo could not reasonably justify in his mind taking unauthorized breaks for which he was being paid.

f. Failure to make a finding that with one exception, every bus other than Santillo's had a properly operating tacograph, that bus drivers were paid according to the work time shown on the tacographs (Tr. 131, 132) and that this was the closest control Respondent could exercise over the time of the bus drivers when they are on the road.

[-13-] 24. The finding under Findings of Fact, Section III.A., recited on page 9 that Patterson failed to warn Santillo concerning Santillo's practice of stopping at his home.

The grounds for the exception are that the finding implies an obligation on the part of Paterson to warn Santillo and the finding ignores the fact that Paterson had twice questioned Santillo about this practice and on both occasions Santillo denied he did this (Tr. 82, 83, 194, 195, 196).

25. The findings under Findings of Fact, Section III.A., recited on pages 10 and 11 that Sulloway denied warning Santillo on the Thursday or Friday before his discharge concerning Santillo leaving his keys in the bus, that Sulloway warned Santillo in this regard three weeks prior to his discharge and again on the day of his discharge, and that Respondent's counsel made an extensive attempt to lead Sulloway into corroborating Paterson's testimony that Sulloway had warned Santillo the Thursday or Friday before his discharge.

The grounds for the exception are that: the record clearly shows there was no "extensive attempt" by Respondent's counsel to lead Sulloway into corroborating Paterson on this point (Tr. 269); the findings fail to comment on Sulloway's demeanor as that of an obviously confused but honest witness; the findings fail to note that Sulloway was obviously confused as to the day he last warned Santillo about the keys because Sulloway testified he warned Santillo when Santillo came in to do his afternoon run (Tr. 272, 273) (Santillo did not do his afternoon run on the day of his discharge but was fired much earlier in the day) and because Sulloway testified that when he told Paterson about the matter Paterson told him to speak with Santillo about it (Tr. 275, 276) (which is inconsistent with the fact that Paterson had determined to fire Santillo at the time Santillo was still out on his morning run); the findings fail to note that Sulloway testified that the last time he warned Santillo about the keys might have occurred during the week prior to Santillo's discharge (Tr. 278); the findings make no attempt to resolve the conflict between Paterson and Sulloway regarding the last warning to Santillo about leaving the keys in his bus and conclude that no such warnings were ever given to Santillo (Tr. 115, 116, 268, 269).

26. The finding under Findings of Fact, Section III.A., recited on page 10, footnote 8, and page 11, footnote 9, that Sulloway testified concerning a system of written warnings to employees and that Paterson denied such a system existed.

The grounds for the exception are that no attempt is made to resolve this conflict in testimony (Tr. 108, 274), that no mention is made of the total lack of evidence of any written warning system, that no employee testified concerning such a system or that any of them ever received a written warning, and that testimony which concerned infractions by employees which became known to the Respondent, including one as a serious as Santillo driving his bus while drinking coffee and which was brought to the Respondent's attention by an official of the school department, resulted in only verbal warnings but never written warnings (Tr. 40, 122, 123, 129).

27. The findings under Findings of Fact, Section III.A., recited on page 11 that Santillo only left his keys in his bus between runs but never after completing his runs, that Santillo has frequently seen other employees leave keys in buses, and that Santillo's testimony is substantially corroborated by Danko who left her keys in her bus from time to time without being warned.

The grounds for the exception are that the findings omit stating that Danko kept her bus at home rather than at the garage as did Santillo and that Danko only brought her bus to the garage occasionally for servicing (Tr. 72, 73). The findings fail to mention Baer's testimony that in the course of his mechanic duties at the garage he would normally find keys left only in 2 or 3 vehicles 2 or 3 times per week and they were very infrequently the same ones (Tr. 231). The findings also fail to mention Holmes' testimony that in the course of his washing buses at the garage he noticed that Santillo left his keys in his bus a lot but that most of the drivers put their keys on the rack in the office (Tr. 245, 246).

28. The finding under Findings of Fact, Section III.A., recited on page 11 that Santillo was never warned about leaving the keys in his bus.

The grounds for the exception are that the testimony cited in support of this finding is misstated and the finding is not otherwise supported or warranted (Tr. 115, 116, 268, 269).

29. The finding under Findings of Fact, Section III.A., recited on page 11 that a new tacograph was installed in Santillo's bus on March 12, 1979, and that the tacograh measured the amount of time Santillo's bus was in operation and when it was stopped.

The grounds for the exception are that the finding omits stating that a tacograph also measures the amount of time a bus is [-16-] stopped as well as the time of day when the stops occur and therefore reveals where the driver is on his route when stops are made and the length of those stops (Tr. 127, 203).

30. The finding under Findings of Fact, Section III.A., recited on page 11, footnote 10, that the installation of tacographs on buses is not an unusual procedure and most buses contained such an instrument.

The grounds for the exception are that the finding omits stating that only one other bus besides Santillo's did not have an operating tacograph since September of that school year even though spare tacographs were available (Tr. 131, 139), the finding omits stating that the specific reason for installing a new tacograph in Santillo's bus on March 12, 1979 was to determine whether Santillo was stopping at his home in the afternoon which he had denied doing (Tr. 82, 83, 131, 132, 194–196), the finding omits stating that the installation of the new tacograph on March 12, 1979, preceded the date of Santillo's first union activities on March 19, 1979 (Tr. 31, 32), and the finding fails to note that the reports of Santillo stopping at his home every day and his denials thereof was a matter of sufficient concern to Respondent to warrant installing a new tacograph in Santillo's bus (Tr. 132).

31. The finding under Findings of Fact, Section III.A., recited on page 12 that the first week's reading of the tacograph discs showed two days when Santillo was taking breaks and stopping at home and yet Paterson failed to take any action against Santillo at that time.

The grounds for the exception are that the finding fails to state that there are seven discs in a complete set, one to record each day of a week (Tr. 95) and that a new tacograph comes with three test discs, the first two of which record the first two days of the week and the third of which records all the remaining days of the week on the same disc, one on top of the other so that each day cannot be separately read (Tr. 94, 95, 144, 145). The finding fails to state that the test discs were not properly installed (Tr. 144), and the finding fails to state that Paterson was waiting for a full week's discs, properly installed, in order to completely and accurately determine the situation regarding Santillo's stops (Tr. 94, 95, 132, 133).

32. The finding under Findings of Fact, Section III.A., recited on page 12 that Paterson's initial determination was that he was going to confront Santillo with his denials and the readings from the tacograph.

The grounds for the exception are that the finding omits stating that the new tacograph was installed in Santillo's bus only to determine whether Santillo was stopping at home, and before having the readings, Paterson did not know that Santillo was taking twice daily coffee breaks; therefore as to the original intention for the installation of a new tacograph, a confrontation was the understandable approach.

33. The finding under Findings of Fact, Section III.A., recited on page 12 that Paterson reviewed the discs from Santillo's bus on Friday, March 23, 1979.

The grounds for the exception are that the finding fails to state that Paterson only noticed gaps on the discs on Friday, March 23, 1979, and did not read the discs with a meter until Monday morning, March 26, 1979, when the amount of time in the gaps (Santillo's stops) and the time of day the stops were made was accurately determined; at that time Paterson made the decicision to terminate Santillo (Tr. 173, 175, 176).

34. The finding under Findings of Fact, Section III.A., recited on page 12 that Paterson read all the tacograph discs, including Santillo's, on Monday, March 26, 1979 as part of Paterson's regular routine.

The grounds for the exception are that the finding fails to state that every Monday morning Paterson reads the tacograph discs of all the buses with a meter to prepare the payroll sheet for the previous week for submission to Respondent's headquarters in Medford and that it takes Paterson approximately 15 minutes to read the discs from each bus (Tr. 132, 133, 137, 172, 175).

35. The finding under Findings of Fact, Section III.B., recited on pages 12 and 13 that Paterson told Baer he heard Santillo started the Union, that Santillo was two-faced and that he was going to get even with Santillo and that these statements constitute violations of Section 8(a)(1) of the Act.

The grounds for the exception are that Paterson's alleged statement that he heard Santillo started the Union is not a statement consistent with creating an impression of surveillance but is more consistent with the idea that someone told

this to Paterson. Paterson's alleged statement that Santillo was two-faced and that he would get even with Santillo, as has already been shown, was just as likely to have referred to Santillo trying to date Paterson's [-19-] girlfriend as to Santillo's involvement with the Union; the words themselves would appear to relate more to the girlfriend situation. Even the witness (Baer) testifying to this statement did not know whether it applied to Santillo's union activities or to Paterson being upset with Santillo trying to date his girlfriend (Tr. 234, 235). The conclusion is therefore based on speculation rather than proven facts.

36. The finding under Findings of Fact, Section III.B., recited on page 14 that Paterson coercively interrogated employees in violation of Section 8(a)(1) of the Act.

The grounds for the exception are that the record does not support a conclusion that Paterson coercively interrogated employees. Paterson admittedly asked a few employees about the Union (Tr. 84, 86) but an examination of the statements alleged to have been made by Paterson cannot reasonably be construed as coercive. Paterson's alleged statements to Baer asking if he had heard anything about the Union and stating that he heard Santillo started the Union (Tr. 223, 224), Paterson's alleged statement to West asking what was with Sam and the Union (Tr. 214), and even Paterson's alleged statements to Santillo asking Santillo to be sure to give an accurate portrayal of wages, and that he, Paterson, was going to pretend to be mad at him (Tr. 12, 13) cannot be construed as not have they been shown to have a coercive effect upon the employees.

37. The finding under Findings of Fact, Section III.B., recited on page 15 that anti-union animus has clearly been established.

The grounds for the exception are that the record does not [-20-] support this conclusion. No anti-union animus on behalf of Paterson or Respondent has been shown; the most that has been shown is that Paterson individually was unhappy with Santillo individually because of Santillo's claiming time he was not working, because Santillo lied to him, because Santillo tried to date Paterson's girlfriend and because Paterson took it personally that his friend Santillo had any involvement with the Union.

38. The finding under Findings of Fact, Section III.B., recited on page 15 that Santillo's leaving keys in his bus

was a pretextual reason for discharge and that leaving keys in buses was a common practice at Respondent's garage.

The grounds for the exception are that Respondent never claimed Santillo would have been fired solely for leaving keys in his bus. Respondent's reason for discharging Santillo was that he had been claiming and paid for time not actually worked and that he lied about it to Paterson. It so happened that Santillo had also been warned about leaving keys in his bus a couple of times within the few weeks preceding his discharge, that Santillo left his keys in his bus again after his morning run on the day of his discharge and this matter was brought up by Paterson when he discharged Santillo (Tr. 115-117, 151, 152).

The record does not support the conclusion that leaving keys in buses was a common practice. On the contrary, the evidence previously cited, including the testimony of Baer and Holmes, reveals it was not a common practice but that Santillo did it with some frequency (Tr. 231, 245, 246). As previously stated, the reliance on Danko's testimony is misplaced because Danko kept her bus at [-21-] home rather than at Respondent's garage (Tr. 72, 73).

39. The finding under Findings of Fact, Section III.B., recited on page 15 that the record reveals serious inconsistencies between the testimony of Paterson and Sulloway on the subject of leaving keys in buses.

The grounds for the exception are that the only inconsistency shown between Paterson and Sulloway on the subject is the date that Santillo ws last warned about this practice. As related previously, Sulloway was obviously in error as to the date of this last warning and testified that it could have occurred the week prior to Santillo's discharge rather than on the day of Santillo's discharge. The inconsistencies in testimony concerning leaving keys in buses has been shown to be more frequent and glaring among General Counsel's witnesses.

40. The finding under Findings of Fact, Section III.B., recited on page 15 that taking of coffee breaks by employees was normal practice.

The grounds for the exception are tht the finding fails to recognize that the situation with Santillo's bus was not the usual situation because his bus did not have a working tacograph and Respondent therefore had no way of knowing Santillo was taking morning and afternoon coffee breaks of 15 minutes each; that when questioned by

Paterson about taking breaks, Santillo denied he did so and told Paterson his bus was always rolling when it was out of the garage (Tr. 82, 83, 130, 131). The finding also fails to recognize that because Respondent did not have knowledge of Santillo taking twice daily coffee breaks, Respondent was foreclosed from [-22-] the option of rearranging Santillo's route, adding children to his route, or docking his pay for the time (Tr. 183-188, 200).

41. The finding under Findings of Fact, Section III.B., recited on page 15 that Respondent tolerated employees taking coffee breaks without taking any action unless the breaks interfered with the driver's route being properly performed and that no drivers were discharged or disciplined for taking coffee breaks.

The grounds for the exception are that the finding is inconsistent with the finding that Respondent rearragned routes, adding children to routes and docked pay when it learned of coffee breaks. Again the finding overlooks the fact that because Santillo's bus lacked a working tacograph and Santillo denied taking any breaks, Respondent did not have knowledge that Santillo was taking coffee breaks and therefore could not take corrective or other action (Tr. 200).

42. The finding under Findings of Fact, Section III.B., recited on page 15 that Respondent considered Santillo stopping at home to be just another unauthorized break.

The grounds for the exception are that the finding is not supported by the record. There is no evidence that Respondent equated Santillo stopping at home with taking coffee breaks. The record makes it clear that Respondent considered Santillo stopping at his home after completing his runs rather than returning directly to the garage a much more serious offense than taking coffee breaks and that this was the moving cause of Santillo's discharge.

43. The finding under Findings of fact, Section III.B., recited on page 16 that it is significant that Paterson never cautioned or admonished Santillo that taking coffee breaks or stopping at home might lead to dismissal or other disciplinary action [-23-] and this failure is not natural and is indicative of discriminatory motivation.

The grounds for the exception are that the finding overlooks the fact that without the tacograph, Respondent had no knowledge of Santillo taking coffee breaks (Tr. 200) and only learned of this practice when reding the tacograph

discs to find out if Santillo was stopping at home. The finding also overlooks the fact that before installing the new tacograph, Paterson twice questioned Santillo about stopping at home and both inquiries were met with denials. Paterson warning Santillo following Santillo's denial of the practice would have been incongruous.

44. The finding under Findings of Fact, Section III.B., recited on page 16 that Paterson took no action when it was first revealed that Santillo was taking unauthorized breaks.

The grounds for the exception are that the finding fails to consider the fact that the initial information was from incomplete test discs that come with new tacographs and that the test discs had not been correctly aligned on installation.

45. The finding under Findings of Fact, Section III.B., recited on page 16 that a three written warning system was utilized by Respondent, no written warning was issued to Santillo and therefore Santillo's conduct was not so serious as to warrant discharge until after Santillo's union activities.

The grounds for the exception are that this finding now apparently resolves the conflict in testimony between Paterson and Sulloway regarding the existence of a written warning system without any indiction of the basis for such resolution. The finding ignores Paterson's statement that no such system is utilized, ignores the fact that there is no evidence that any employee ever received a written warning, even those discharged, ignores the fact that Santillo never received a written warning concerning his drinking coffee while driving incident that was reported to Respondent by a school official, fails to comment on Sulloway's demeanor and fails to recognize that, even though the new tacograph was installed in Santillo's bus prior to his union activities, his taking unauthorized breaks was not established until after his union activities had begun.

46. The finding under Findings of Fact, Section III.B., recited on page 17 that the preponderance of the evidence establishes that Santillo was discharged in violation of Section 8(a)(1) and (3) of the Act and that even though Santillo's conduct was unsatisfactory, on the record as a whole, Respondent would not have discharged Santillo but for his union activities.

The grounds for the exception are that, for the reasons previously stated in these exceptions, the preponderance of the evidence establishes that Santillo was discharged for

taking unauthorized breaks for which he had been claiming and receiving payment, particularly the daily break when he stopped at his home after completing his runs, and, conversely, the preponderance of the evidence does not establish that Santillo's discharge was due to his union activities.

47. The finding under Findings of Fact, Section III.B., recited on page 17, footnote 20, that it was not an unusual procedure to have tacographs in buses.

[-25-] The grounds for the exception are, as previously stated, that the finding fails to recognize that although every other bus with one exception had a working tacograph, Santillo's bus did not have one from the beginning of that school year in September, 1978, until March 12, 1979 (one week before his union activites commenced) even though spare tacographs were available; that therefore the installation of a tacograph in Santillo's bus on March 12, 1979 was not the usual situation but was specifically installed at that time to determine whether, in fact, Santillo was stopping at his home as had been reported to Respondent but denied by Santillo.

48. Respondent, for the reasons previously cited, takes exception to the conclusions of law, remedy and recommended order recited on pages 17, 18, and 19 on the grounds that the same are not supported or warranted by the evidence.

49. Exception is taken generally to the selective recitation of evidence in the Decision which, as has been demonstrated, includes and/or misstates the evidence so as to support the ultimate conclusions, and excludes and/or misstates the evidence which is contrary to those ultimate conclusions.

50. Exception is taken generally to the style of the Decision which negatively characterizes the testimony of Paterson and Sulloway by the frequent use of words such as "claim", "allege", "asserts", and "according to", whereas the testimony of General Counsel's witnesses did not receive like negative characterization.

51. Exception is taken generally to the Decision's failure to state the inconsistencies and contradictions in Santillos testimony which reveal that it is unworthy of credence. These inconsistencies and contradictions include:

a. Santillo's direct testimony that he called Paterson to tell him not to take it personally after West told

Santillo tht Paterson was taking Santillo's union activities personally and that Paterson then made the statement he was going to pretend on Monday that he was mad at Santillo (Tr. 12, 13, 63, 64, 65). In cross-examination of Santillo it was revealed that in his affidavit to the NLRB. Santillo stated that he could not recall why he was talking with Paterson the time Paterson made the comment about pretending to be mad on Monday (Tr. 36, 37), and also revealed that in his affidavit to the NLRB, Santillo stated that his telephone conversation with Paterson concerning Paterson taking it personally took place a few days after his (Santillo's) discharge (Tr. 37-40).

b. Santillo's direct testimony that he took one coffee break every morning and another coffee break every afternoon (Tr. 22, 25, 26, 62). In cross-examination of Santillo it was revealed that in his affidavit to the NLRB, Santillo stated that other than the one occasion in September or October, 1978, he never took coffee breaks (Tr. 40, 41).

c. On crossexamination Santillo admitted that when Paterson questioned him about taking coffee breaks, he lied to Paterson by telling Paterson that he was not taking coffee breaks when, in fact, he had been doing so (Tr. 42). (The same untrue denial that Santillo was later to repeat in his NLRB affidavit).

d. On cross-examination Santillo at first denied that when Paterson spoke to him in September or October, 1978 concerning taking a coffee break, Paterson told him that he had spoken to him before about the same thing (Tr. 41). When confronted with his affidavit to the NLRB regarding this subject, Santillo admitted that Paterson did make such a statement to him (Tr. 41).

e. On cross-examination Santillo stated that when he received the telephone call from Paterson on the day of his (Santillo's) discharge, he contacted a union representative before seeing Paterson because he feared he was going to be fired and that he believed he was fired for union activities (Tr. 43); yet Santillo claims he did not make any statements about the Union to Paterson at the time because he was only concerned with being fired (Tr. 66), that

Paterson brought up the subject of the Union out of the blue by saying Santillo's firing had nothing to do with the Union (Tr. 65, 66), but Santillo finally concedes that it is possible he told Paterson that the reason he thought he was being fired was because of union activities (Tr. 43).

f. Santillo's direct testimony that when he stoped at his home in the afternoons he "... probably spent all of 10 minutes ..." (Tr. 23), and that "... he spent at least 10 minutes there ..." (Tr. 27). On cross-examination Santillo admitted that the stops were for "10 or 15 minutes" (Tr. 45), possibly as long as 20 minutes (Tr. 45, 46), and that in his affidavit to the NLRB he stated that the stops at his house were never for more than 10 minutes (Tr. 46). Santillo also stated he knew he was not authorized to take his bus home (Tr. 52).

g. On cross-examination Santillo at first testified that he stopped at his house before going back to the garage "... three times a week at least" (Tr. 45), then conceded it might have been four or five times a week (Tr. 45), then it might have been four or five times a week (Tr. 45), then conceded that it was pretty much on a daily basis (Tr. 62), and admitted that in his affidavit to the NLRB, he stated he only stopped at his house about twice a week (Tr. 46).

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CERTIFICATE OF SERVICE

I, C. Fred Welensky, attorney for Respondent, state that on March 14, 1980, I served the foregoing Exceptions on the parties hereto and the Regional Director by mailing copies thereof, postage prepaid as follows:

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C. FRED WELENSKY

Supreme Court of the United States

No. 82-168

NATIONAL LABOR RELATIONS BOARD, PETITIONER,

v.

TRANSPORTATION MANAGEMENT CORP.

ORDER ALLOWING CERTIORARI.
FILED NOVEMBER 15, 1982.

The petition herein for a writ of certiorari to the United States Court of Appeals for the First Circuit is granted.